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Friday
June 17, 1988

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Rules and Regulations

Federal Register

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Friday, June 17, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 618]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 618 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period June 19 through June 25, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: Regulation 618 (§ 910.918) is effective for the period June 19 through June 25, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on June 14, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 12-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.918 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.918 Lemon Regulation 618.

The quantity of lemons grown in California and Arizona which may be handled during the period June 19, 1988, through June 25, 1988, is established at 400,000 cartons.

Dated: June 15, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.
[FR Doc. 88-13823 Filed 6-16-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 88-ANE-03; Amdt. 39-5933]

Airworthiness Directives; General Electric (GE) CF6-6 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an omission error contained in Amendment Number 39-5933 concerning General Electric (GE) CF6-6 Turbofan Engines, which appeared in the Federal Register of May 24, 1988, at 53 FR 18548.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

Correction

In consideration of the foregoing, Amendment 39-5933 published in the *Federal Register* of May 24, 1988, at 53 FR 18548, is hereby corrected by adding part numbers inadvertently omitted from the lead-in sentence of paragraph (a) of the Amendment. The lead-in sentence of paragraph (a) in the first and second columns on page 18549 is revised to read as follows: "Remove from service, HPC rear shafts, Part Numbers 9021M68G02 through 9021M68G04 inclusive; 9021M68G07 through 9021M68G09 inclusive; 9021M68G12; 9021M68G13; and 1380M55G01 through 1380M55G06 inclusive, as follows:".

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

Issued in Burlington, Massachusetts, on June 7, 1988.

Timothy P. Forte,
Acting Director, New England Region.

[FR Doc. 88-13695 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 72**

[DoD Instruction 1322.19]

Voluntary Education Programs in Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense has issued Department of Defense Instruction 1322.19, "Voluntary Education Program in Overseas Areas," to implement Pub. L. 99-145, section 1212, codified at 10 U.S.C. 113 note. This part establishes responsibilities and procedures for providing civilian postsecondary education programs in overseas areas. Among other things, the part sets criteria to avoid unnecessary duplication of educational programs on military installations.

DATES: Effective May 9, 1988. Comments must be received by July 18, 1988.

ADDRESS: Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 3E764, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: L. Saltman, telephone (202) 695-9053.

SUPPLEMENTARY INFORMATION: In the interest of full public discussion of this matter, the Department of Defense

invites public comments, which must be received by July 18, 1988. The Department will consider these comments in determining whether the Instruction should be modified.

List of Subjects in 32 CFR Part 72

Armed forces, Colleges and universities.

Accordingly, Title 32, Chapter I, is amended to add Part 72 as follows:

PART 72—VOLUNTARY EDUCATION PROGRAMS IN OVERSEAS AREAS

- Sec.
72.1 Purpose.
72.2 Applicability and scope.
72.3 Responsibilities.
72.4 Procedures.
72.5 Effective date and implementation.

Authority: Pub. L. 99-145, section 1212.

§ 72.1 Purpose.

This part:

(a) Prescribes uniform procedures and assigns responsibilities for the Military Services to avoid the unnecessary duplication of postsecondary education offerings in overseas areas under Pub. L. 99-145, section 1212 and DoD Directive 1322.8.¹

(b) Under Pub. L. 145, section 1212:

(1) Reflects the statutory requirement, subject to the exceptions in § 72.1(b)(2) that no solicitation, contract, or agreement for off-duty postsecondary education services for military members, DoD civilian employees, or the dependents of such military members or employees, other than for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution.

(2) Prescribes criteria for avoiding the unnecessary duplication of educational services by exercising the authority in Pub. L. 99-145 to grant exceptions, when required, to § 72.1(b)(1).

§ 72.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

(b) Shall be extended to all persons seeking or receiving off-duty postsecondary education services, as described in § 72.1(b)(1).

§ 72.3 Responsibilities.

(a) *Each Overseas Theater Commander* shall implement this part and may:

(1) When necessary to avoid unnecessary duplication of offerings of postsecondary education services, authorize the issuance of solicitations and the execution of contracts and agreements that limit the provision of such offerings at one or more installations to one institution or a prescribed maximum number of institutions.

(2) Delegate the authority in § 72.3(a)(1) but not below the level of a general or flag officer, or a civilian equivalent.

§ 72.4 Procedures.

(a) Under this part, "unnecessary duplication" means the provision of education services by two or more potential offerers which, because of such duplication, is determined to have an adverse effect on the provision of the education services provided in the theater concerned, consistent with ensuring the maximum availability of alternative offerers of such services.

(b) One or more of the following criteria must be satisfied to limit the number of providers of postsecondary education services:

(1) The demographic distribution of the potential student population prevents the effective delivery of postsecondary education services by multiple offerers.

(2) Adequate classroom and administrative space to meet education program needs is not available to multiple providers.

(3) DoD educational staff needed to manage education programs at the installation level are not available.

(4) The theater commander cannot provide reasonable logistic support to installations and persons employed in providing education programs if there are multiple providers. Logistic support includes supplies, services, facilities, transportation, privileges and other benefits provided to nongovernmental entities or individuals.

(c) Where necessary, the enrollments generated at large installations may be used to balance the enrollments at small or remote locations to provide for economies of scale and to ensure availability of the widest range of education services possible at reasonable tuition rates, consistent with § 72.4(a) of this part.

§ 72.5 Effective date and implementation.

This part is effective May 9, 1988. Forward one copy of implementing documents to the Assistant Secretary of

¹ Copies may be obtained, if needed, from the U.S. Naval Publication and Forms Center, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

Defense (Force Management and Personnel) within 120 days.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 13, 1988.

[FR Doc. 88-13776 Filed 6-16-88; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 286

[DoD 5400.7-R]

Freedom of Information Act Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This amendment is issued in order to correct an administrative error previously printed in the Federal Register (July 10, 1987, 52 FR 25976).

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT:

Mr. C. Talbott, Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400, telephone (202) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.
Accordingly, 32 CFR Part 286 is amended as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation for Part 286 continues to read as follows:

Authority: Pub. L. 99-570, sections 1801-1804; Pub. L. 99-661, section 2328; 5 U.S.C. 552.

§ 286.5 [Amended]

2. Section 286.5 is amended by removing the paragraph designation "(a)", removing the heading "Definitions," replacing the period after the word "applicable" with a colon in the introductory text, and redesignating paragraphs (b) through (g) as (a) through (f) respectively.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1988.

[FR Doc. 88-13775 Filed 6-16-88; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 391

[DoD Directive 5105.53]

Director of Administration and Management

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the Office of the Director of Administration and Management and delineates its responsibilities, functions, relationships, and authorities. An addition to the Defense Department organization makes this regulation necessary.

EFFECTIVE DATE: May 24, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. H. Becker, Office of the Director of Administration and Management, the Pentagon, Washington, DC 20301, telephone (202) 695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 391

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 391 as follows:

PART 391—DIRECTOR OF ADMINISTRATION AND MANAGEMENT

Sec.

- 391.1 Purpose.
- 391.2 Definition.
- 391.3 Responsibilities and functions.
- 391.4 Relationships.
- 391.5 Authorities.
- 391.6 Effective date.

Authority: 10 U.S.C. 113.

§ 391.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C., this part establishes the position of Director of Administration and Management (DA&M), reporting to the Deputy Secretary of Defense, with the responsibilities, functions, relationships, and authorities prescribed herein.

§ 391.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

§ 391.3 Responsibilities and functions.

The Director of Administration and Management shall serve as the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense on DoD-wide organizational and administrative management matters. In this capacity the DA&M shall:

(a) Advise and assist the Secretary and Deputy Secretary of Defense on administration and organization within the Department of Defense.

(b) Provide policy guidance to DoD Components and coordinate on

administrative and organizational matters.

(c) Review, evaluate, and develop recommendations to improve the organization, functions, and management of DoD activities and programs.

(d) Develop and maintain organizational charters for the OSD, the Defense Agencies, the DoD Field Activities, and other DoD activities, as required.

(e) Provide policy guidance, coordinate, and oversee administration of assigned programs, including the DoD Committee Management Program, the DoD Management Headquarters Program, and the DoD Privacy Program.

(f) Administer the Historical Program of the OSD and coordinate DoD Historical Program activities.

(g) Analyze and control manpower requirements for the OSD, the OJCS, and other assigned activities.

(h) Administer the Internal Management Control Program for the OSD and other assigned activities.

(i) Participate in planning, programming, and budgeting activities related to DA&M responsibilities.

(j) Promote coordination, cooperation, and mutual understanding on matters under DA&M cognizance within the DoD and between the DoD, other Government Agencies, and the public.

(k) Serve on boards, committees, and other groups concerned with matters pertaining to the functions and responsibilities assigned to the DA&M and represent the Secretary and Deputy Secretary of Defense on such matters outside the DoD.

(l) Perform such other duties as the Secretary or Deputy Secretary of Defense may prescribe.

§ 391.4 Relationships.

(a) In the performance of the above functions, the DA&M shall:

(1) Coordinate and exchange information with officials of other DoD Components having collateral or related functions.

(2) Use existing facilities and services of the DoD, whenever practicable, to achieve maximum efficiency and economy.

(b) Serve as the Director, Washington Headquarters Services in accordance with 32 CFR Part 356.

(c) Other OSD officials and the heads of DoD Components shall coordinate with the DA&M on all matters related to the functions cited in § 391.3.

§ 391.5 Authorities.

The DA&M is hereby delegated authority to:

(a) Issue DoD Instructions and one-time directive-type memoranda, consistent with DoD 5025.1-M that implement policies approved by the Secretary or Deputy Secretary of Defense in the functions assigned to the DA&M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman, Joint Chiefs of Staff (CJCS).

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5, in carrying out assigned functions, as necessary.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Commands shall be coordinated with the CJCS.

(d) Establish arrangements for DoD participation in non-defense governmental programs for which the DA&M is assigned primary staff cognizance.

(e) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(f) Act for the Secretary of Defense before the Joint Committee on Printing, the Public Printer, and the Director of the Office of Management and Budget on all matters relating to printing, binding, and publications requirements, consistent with 44 U.S.C. Chapter 11.

§ 391.6 Effective date.

This part is effective May 24, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-13774 Filed 6-16-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 4

[CGD 88-036]

OMB Control Numbers; Reporting and Recordkeeping Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1980 all regulations which contain recordkeeping or reporting requirements must be approved by the Director, Office of Management and Budget (OMB). Once

approved, these regulations are assigned an OMB Control Number. OMB Control Numbers for regulations within Title 33, Code of Federal Regulations are displayed in a Table appearing at 33 CFR 4.02. This document amends the table to include OMB Control Numbers assigned to certain regulations in Chapter 1 of Title 33, Code of Federal Regulations, and makes minor corrections.

EFFECTIVE DATE: June 17, 1988.

FOR FURTHER INFORMATION CONTACT: LCDR Don Wrye, (202) 267-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days. This rule merely displays existing OMB Control Numbers pertaining to specific Coast Guard regulations for the public's information, and makes minor corrections to the Table. Therefore the Coast Guard has determined that notice and comment procedure are unnecessary under the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Since this rule has no substantive effect, good cause exists to make this rule effective in less than thirty days under 5 U.S.C. 553(d)(3).

Drafting Information

This rule was drafted by LCDR Don M. Wrye, Administrative Law Branch, Regulations and Administrative Law Division, Office of Chief Counsel.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers and makes technical corrections to the Table. No new substantive requirements are imposed. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 4

Reporting and recordkeeping requirements.

In consideration of the foregoing, Part 4 of Chapter I, Title 33, Code of Federal Regulations, is amended as follows:

PART 4—[AMENDED]

1. The authority citation for Part 4 continues to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

2. Section 4.02 is revised to read as follows:

§ 4.02 Display.

Current OMB
control No.

33 CFR part or section where identified and described:

Part 45.....	2115-0036
Part 66.....	2115-0002
Part 66.....	2115-0002
Part 67.....	2115-0038
Part 89.....	2115-0074
Part 100.....	2115-0017
Part 115.....	2115-0050
Part 125.....	2115-0039
Section 126.15(c).....	2115-0054
Section 126.15(o)(1).....	2115-0105
Section 126.15(o)(7)(vii).....	2115-0507
Section 126.17.....	2115-0013
Part 127.....	2115-0552
Section 135.215.....	2115-0041
Part 137.....	2115-0545
Section 140.15.....	2115-0553
Part 141.....	2115-0143
Part 146.....	2115-0003
Section 146.130.....	2115-0542
Part 151.....	2115-0025; 0526 and 0544
Section 151.43.....	2115-0543 and 0544
Section 153.3.....	2115-0089
Section 153.8.....	2115-0089
Section 153.10.....	2115-0089
Section 153.12.....	2115-0089
Section 153.203.....	2115-0137
Section 153.483.....	2115-0089
Section 153.490.....	2115-0089
Section 153.491.....	2115-0089
Section 153.900.....	2115-0089
Section 153.901.....	2115-0089
Section 153.909.....	2115-0089
Section 153.1119.....	2115-0089
Section 153.1120.....	2115-0089
Section 153.1132.....	2115-0089
Section 153.1114.....	2115-0089
Section 153.1116.....	2115-0089
Section 153.1130.....	2115-0089
Section 154.107.....	2115-0097
Section 154.110.....	2115-0077
Section 154.300.....	2115-0083 and 0078
Section 154.300 through 154.325.....	2115-0078
Section 154.740(a)-(e).....	2115-0098
Section 154.740(f).....	2115-0508
Section 155.107.....	2115-0097
Section 155.740.....	2115-0120
Section 155.820(a)-(c).....	2115-0096
Section 155.820(d).....	2115-0506
Section 156.107.....	2115-0097
Section 156.150.....	2115-0506
Part 156, Subpart B.....	2115-0539

Current OMB
control No.

Part 157	2115-0518; 0503 and 0520
Section 157.23	2115-0520
Section 157.37	2115-0520
Section 157.49	2115-0520
Part 158	2115-0543
Section 158.140	2115-0543 and 0544
Section 158.150	2115-0543 and 0544
Section 158.165	2115-0543 and 0544
Section 158.190	2115-0543 and 0544
Part 160	2115-0540
Part 161	2115-0540
Part 164	2115-0540
Part 165	2115-0540
Section 165.15	2115-0076
Section 165.25	2115-0076
Section 165.803(i)	2115-0092
Section 173.23	2115-0009
Section 173.25	2115-0009
Section 173.27	2115-0009
Section 173.55	2115-0010
Section 173.71	2115-0009
Section 179.13	2115-0035
Section 179.15	2115-0035
Section 181.21 through 181.31	2115-0055

Dated: June 7, 1988.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Chairman,
Marine Safety Council.

[FR Doc. 88-13638 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 188-034]

Connecticut River Raft Race
Regulations; Effective Dates for 1988

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: This notice provides the effective dates for the regulations (33 CFR 100.102) governing the 1988 running of the Connecticut River Raft Race.

EFFECTIVE DATE: The regulations for the Connecticut River Raft Race, 33 CFR 100.102, are effective from 9:00 am to 2:00 pm on July 30, 1988 and thereafter annually on the first Saturday in August unless otherwise specified in the Coast Guard Local Notice to Mariners and a Federal Register Notice.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

Dated: June 7, 1988.

R. L. Johanson,

Rear Admiral, U.S. Coast Guard, Commander,
First Coast Guard District.

[FR Doc. 88-13640 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-37]

Marine Event; Fourth of July
Celebration, Cape May, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Fourth of July Celebration. The celebration will consist of a fireworks display launched from the Second Street Jetty, Cape May, New Jersey between 9:00 p.m. and 10:00 p.m., on July 4, 1988. These special local regulations are necessary to control spectator craft, and provide for the safety of life and property on the navigable waters within the immediate vicinity of the celebration.

EFFECTIVE DATE: These regulations are effective from 8:00 p.m. until 11:00 p.m., on July 4, 1988.

FOR FURTHER INFORMATION CONTACT: B.J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 23, 1988, leaving insufficient time to publish a notice of proposed rules or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Cape May Chamber of Commerce, Cape May, New Jersey is sponsoring this celebration, which will consist of a fireworks display launched from the Second Street Jetty, Cape May, New Jersey. An area of the Atlantic Ocean, with a radius of 1000 feet surrounding the jetty, will be closed to waterborne traffic during the fireworks display. However, vessels transiting the area will not be disrupted since there are no navigable channels in the area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0537 is added to read as follows:

§ 100.35-0537 Second Street Jetty, Cape May, New Jersey.

(a) *Definitions*—(1) *Regulated Area*. An area of the Atlantic Ocean with a radius of 1000 feet from the Second Street Jetty with the coordinates for the center of the circle at latitude 34°56.1' North, longitude 74°55.7' West.

(2) *Coast Guard Patrol Commander*. The Coast Guard Patrol Commander is a commissioned or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape May, Cape May, New Jersey.

(b) *Special Local Regulations*. (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant, or petty officer.

(c) *Effective Dates*. These regulations are effective from 8:00 p.m. until 11:00 p.m., on July 4, 1988.

Dated: June 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander,
Fifth Coast Guard District.

[FR Doc. 88-13630 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-88-38]

Special Local Regulations for
Portsmouth Power Boat Regatta,
Western Branch, Elizabeth River,
Portsmouth VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Portsmouth Power Boat Regatta to be held on July 16, 1988, on the waters of the Western Branch, Elizabeth River west of the Churchland Bridge, Portsmouth, Virginia. It will consist of approximately 35 outboard powerboats racing a designated course within the regulated area. The special local regulations will govern vessel activities during the powerboat races. The regulations are necessary due to the potential danger of the waterway users, the confined nature of the waterway, and the expected spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective from 10:00 a.m. until 6:00 p.m., local time, on July 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable since the application, with all of the required information, was not received in this office until May 31, 1988, and there was not sufficient time remaining to publish proposed rules in advance of the event, or to provide delayed effective date.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Portsmouth Power Boat Association is the sponsor of this event. The event will consist of approximately 35 powerboats, ranging from 13 to 19 feet in length, racing on a designated course within the regulated area, on the waters of the Western Branch of the Elizabeth River, west of the Churchland Bridge. The races will consist of a series of heats. A section of the Western Branch of the Elizabeth River, approximately 700 yards southwest of the Churchland Bridge will be closed during the races, except that between heats the Coast Guard Patrol Commander will allow vessel traffic to

transit the area. Since the waterway will not be closed for extended periods, waterborne traffic should not be severely disrupted.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0538 is added to read as follows:

§ 100.35-0538 Western Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions*—(1) *Regulated Area*. The regulated area is bounded by a line drawn from latitude 36° 50' 17.0" North, longitude 76° 21' 44.0" West, to latitude 36° 50' 17.0" North, longitude 76° 22' 31.0" West, thence to latitude 36° 50' 11.0" North, longitude 76° 22' 31.0" West, thence to latitude 36° 50' 11.0" North, longitude 76° 21' 44.0" West, and thence to the beginning point.

(2) *Coast Guard Patrol Commander*. The Coast Guard Patrol Commander is a Coast Guard commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations*—(1) Except for participants in the Portsmouth Power Boat Regatta and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop his vessel immediately when directed to do so by any Coast Guard commissioned, warrant, or petty officer onboard a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area at any time a race heat is not being run.

(c) *Effective Date*. These regulations are effective from 10:00 a.m. until 6:00 p.m., local time, on July 16, 1988.

Dated: June 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-13629 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION**38 CFR Part 1****Homeless Claimants**

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) has amended its regulations to include specific provisions for processing and effecting payment on the claims of "homeless" individuals. These amendments are necessary to implement certain provisions of the Homeless Eligibility Clarification Act. The effect of these amendments will be to ensure the delivery of benefits to individuals who do not provide the VA with a mailing address.

EFFECTIVE DATE: This regulation is effective October 1, 1986, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 23188-23189 of the Federal Register of June 18, 1987, the VA published proposed regulatory amendments on delivery of benefits and, in particular, to individuals who do not have a current address. Interested persons were invited to submit comments, suggestions or objections by July 20, 1987.

Three comments were received, and each commenter addressed the proposed regulation from the point of view that the VA was trying to impose an inequitable or unrealistic burden on one of the most needy segments of our society—the homeless.

Adoption of this regulation arises from the enactment of provisions of Pub. L. 99-570 which require the VA to develop a method of delivery of benefits to individuals who do not have a mailing address.

Under existing practices, the VA honors any mailing address provided by a claimant and sends to that address all notices and correspondence intended for the claimant as well as any benefit

checks to which the claimant becomes entitled. The VA will continue to use that mailing address until notified of a change. The address may be a residence, a shelter, a post office box, general delivery, the address of a friend or relative, or any other address which sufficiently identifies the point at which the individual desires to receive mail. Furthermore, VA also provides counseling to the claimant to emphasize the desirability of providing a mailing address to the VA to ensure prompt delivery of benefits.

Upon review of the comments to our proposed regulation, the Agency has decided to incorporate existing procedures into the new regulation so that the public will be aware of them. We anticipate that, by utilizing the practices noted, the number of claimants who will not have any mailing address of record and to whom the portion of the proposed regulation providing for holding the check and correspondence in the VA would apply will be extremely small.

It cannot be overemphasized that this regulation establishes procedures of last resort in the VA's benefit delivery system. Holding a check or documents in the VA will be used only when a claimant inadvertently does not or intentionally will not, provide the VA with any mailing address of his or her choice. Extra emphasis through counseling on the desirability of providing the Agency with a mailing address will, we believe, rectify any problem in ensuring "homeless" claimants receive benefits.

All three commenters suggested that requiring "homeless" claimants to travel to a regional office to get their monthly benefit checks would be a significant burden on them, and offered alternatives such as allowing "homeless" claimants to go to any VA facility to collect monthly payments. One commenter suggested that the VA adopt the method used by the Social Security Administration. That agency will send checks to its district offices which are closer to the claimant's location. The VA does not have district offices that can be used for this purpose and generally has only one regional office per State. Moreover, the Agency cannot send multiple checks to a number of offices in hopes that the claimant will arrive to claim one of them. With respect to non-VA providers of services to "homeless" veterans, it would be impractical to require the VA to forecast which facility the veterans may visit, and such facilities will lack the means to adequately secure VA checks.

However, in further reviewing the proposed regulation, we have concluded that under certain circumstances alternate sites should be permitted to ensure delivery. Suitable facilities must have an Agent Cashier with the means to safeguard checks, and various VA regional offices, medical centers and domiciliaries are so equipped. Hence, we are amending the regulation to allow the compensation, pension and survivors' benefit checks to go to the regional office having jurisdiction over the claim; the education checks to the VA facility closest to the school attended; and, where appropriate, any benefit check to any other VA facility deemed by the VA as being most likely to result in delivery under the circumstances of the case, such as the VA medical facility in which the claimant was last examined or treated. In this way, we maximize the Agency's flexibility in meeting the needs of individual claimants, yet retain appropriate safeguards over the disbursement of public funds.

One commenter suggested that the VA define the term "homeless claimant." We do not believe that is necessary since the legislation does not simply affect the "homeless," but all claimants who do not provide mailing addresses. The same commenter suggested that mail be sent to the Veterans Services Officer (VSO) at the regional office and that efforts be made to obtain mailing addresses when checks are claimed in person. The VA believes that both checks and correspondence in these cases should be delivered to one location. Since the Agent Cashier already has the means to protect the checks, correspondence should be similarly protected. Sending checks and correspondence to multiple sites would be confusing to claimants and increase the possibility of lost or misdelivered items. The rule is clarified to include the handling of correspondence by the Agent Cashier. As a matter of procedure, VSOs and their staff already counsel claimants on the desirability of designating a mailing address. We do, however, plan to further emphasize to them the importance of counseling claimants in this regard.

One commenter suggested that checks be held for 90 rather than 30 days while an extensive search for the payee is conducted. For administrative and security reasons it is the current policy of the VA that benefit checks not be held in excess of 30 days. The VA believes that 30 days is more than an adequate amount of time to mount a substantial effort to find payees of unclaimed checks. If experience shows

another period is more appropriate, the rule will be amended at a later date. It should be noted that, even when checks are returned to the Treasury, the VA can promptly reissue them once the eligible person is located. We have also considered the feasibility of combing private and public facilities in search of claimants who have failed or refused to provide the Agency with mailing addresses. Unfortunately, the VA is unable to take on such a project due to legitimate privacy concerns of the individuals and the unwarranted drain on limited outreach resources.

The same commenter also objected to the requirement that payees present proper identification when claiming benefit checks at the office of the Agent Cashier. It was asserted that "homeless" claimants may not possess traditional forms of identification. No alternative was offered, so it must be assumed that the commenter was suggesting that the identification requirement be deleted. We cannot agree. The form of identification was intentionally not specified so that the Agent Cashier would have some flexibility to accept other than traditional proofs of identity. However, while the form of identification may be other than traditional, it still must be sufficient to allow the Agent Cashier to reasonably conclude that the individual is the proper payee. In these situations the Agent Cashier will be responsible for delivering benefit checks to the proper recipients, and it would clearly be irresponsible to release those checks to any individual on the mere verbal assertion that he or she was the named payee. We would also observe that beneficiaries must often present proper identification when cashing such checks, so the regulation imposes no unrealistic or undue burden upon claimants.

A final comment was to the effect that this regulation constituted an inexplicable reversal of Agency policy. We disagree. As pointed out above, the use of the Agent Cashier as a delivery point for benefit checks in cases where no mailing address has otherwise been designated is a procedure of last resort. When "homeless" individuals contact the VA to apply for benefits, they will be urged to designate a mailing address of their choice and will be counseled on the effects of not doing so. We expect and encourage that the same advice will be provided by veterans' organizations and other community service agencies. All previous policy statements and directives have been geared toward providing maximum assistance to this needy group of veterans, and this procedure for designating the Agency

Cashier to receive and disburse benefit checks is for application only when all other attempts to have a mailing address of choice designated by the claimant have failed.

The proposed regulation was published as a proposed amendment to 38 CFR Part 3, Adjudication. Since the final regulation has been expanded to cover more than compensation, pension and survivors' benefits, we have determined that it should be placed in Part 1 of Title 38 Code of Federal Regulations and, thus, should have Agency-wide application.

The proposed rule, as amended herein, is adopted. We appreciate the interest expressed by each commenter.

The Administrator hereby certifies that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this regulation imposes no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this final regulation is non-major for the following reasons:

- (1) It will not have an annual effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Privacy, Security measures.

Approved: May 25, 1988.

Thomas K. Turnage,
Administrator.

PART 1—[AMENDED]

38 CFR Part 1, General, is amended by adding a new center heading and § 1.710 to read as follows:

Homeless Claimants

§ 1.710 Homeless claimants—delivery of benefit payments and correspondence.

(a) All correspondence and all checks for benefits payable to claimants under laws administered by the Veterans Administration shall be directed to the address specified by the claimant. The Veterans Administration will honor for this purpose any address of the claimant in care of another person or organization or in care of general delivery at a United States post office. In no event will a claim or payment of benefits be denied because the claimant provides no mailing address.

(Authority: 38 U.S.C. 3003; 3020)

(b) To ensure prompt delivery of benefit payments and correspondence, claimants who seek personal assistance from Veterans Benefits Counselors when filing their claims shall be counseled as to the importance of providing his or her current mailing address and, if no address is provided, the procedures for delivery described in paragraph (d) of this section.

(Authority: 38 U.S.C. 3003; 3020)

(c) The Veterans Administration shall prepare and distribute to organizations specially serving the needs of veterans and the homeless, including but not limited to shelters, kitchens and private outreach facilities, information encouraging such organizations to counsel individuals on the importance of providing mailing addresses to the Veterans Administration and advising them of this regulation.

(Authority: 38 U.S.C. 3003; 3020)

(d) If a claimant fails or refuses to provide a current mailing address to the Veterans Administration, all correspondence and any checks for benefits to which the claimant is entitled will be delivered to the Agent Cashier of the regional office which adjudicated or is adjudicating the claim in the case of compensation, pension or survivors' benefits, to the Agent Cashier of the Veterans Administration facility closest to the educational institution or training establishment attended by a claimant in the case of education benefits, or to the Agent Cashier of any other Veterans Administration facility deemed by the Agency to be appropriate under the circumstances of the particular case. The claimant, within 30 days after issuance, may obtain delivery of any check or correspondence held by an Agent Cashier upon presentation of proper identification. Checks unclaimed after 30 days will be returned to the Department of the Treasury and the correspondence to the regional office or

facility of jurisdiction. Thereafter, the claimant must request the reissuance of any such check or item of correspondence by written notice to the Veterans Administration.

(Authority: 38 U.S.C. 3003; 3020)

[FR Doc. 88-13742 Filed 6-16-88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6796]

Suspension of Community Eligibility under the National Flood Insurance Program; Iowa; Correction

AGENCY: Federal Emergency
Management Agency.

ACTION: Final rule; correction.

SUMMARY: This document makes correction to final rule, Suspension of Community Eligibility under the National Insurance Program (NFIP), published June 1, 1988, at 53 FR 19907. The following communities were erroneously listed in this rule and should be deleted. The communities are already suspended from participating in the NFIP. The communities are in the State of Iowa. They are:

City of Earling
City of Fort Atkinson
City of Guthrie Center
City of Inwood
City of Lytton
City of Merville
City of Portsmouth
City of Russell
City of Winfield

FOR FURTHER INFORMATION CONTACT:
Frank H. Thomas, Assistant
Administrator, Office of Loss Reduction,
Federal Insurance Administration, (202)
646-2717, 500 C Street, Southwest,
FEMA—Room 416, Washington, DC
20472.

PART 64—[CORRECTED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq.,
Reorganization Plan No. 3 of 1978, E.O. 12127.

Issued: June 10, 1988.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 88-13708 Filed 6-16-88; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, June 14, 1988, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the commercial fishery quota of 73,700 chinook salmon for the area will be reached by that time. The closure is necessary to conform to the preseason announcement of 1988 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: Closure of the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial salmon fishing is effective at 2400 hours local time, June 14, 1988. Comments on this closure will be received until June 29, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director,

Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the *Federal Register* under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). NOAA announced that the 1988 commercial fishery for all salmon except coho from the U.S.-Canada border to Cape Falcon, Oregon, would be partitioned into two seasons: (1) May 1 through the earlier of May 31 or the attainment of a quota of 55,300 chinook salmon, and (2) June 1 through the earlier of June 15 or the attainment of the overall quota of 73,700 chinook salmon north of Cape Falcon.

Based on the best available information, the commercial fishery catch from the U.S.-Canada border to Cape Falcon, Oregon, is projected to reach the overall quota of 73,700

chinook salmon by midnight, June 14, 1988.

Therefore, NOAA issues this notice to close the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, effective midnight, June 14, 1988. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, WDF, and ODFW regarding a closure of the commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon. The WDF and ODFW representatives confirmed that Washington and Oregon will close the commercial fishery in state waters adjacent to this area of the EEZ effective midnight, June 14, 1988.

The Secretary has determined that good cause exists for this notice of closure to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted by the Secretary until June 29, 1988.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 14, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-13773 Filed 6-14-88; 4:49 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 117

Friday, June 17, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Request for comments.

SUMMARY: The NCUA Board requests comment on nine Federal credit union ("FCU") field-of-membership and chartering issues. Three were issued for comment in September 1987, but have now been refined based on the comments received and further staff study: (1) Need for streamlining the procedure for reviewing field-of-membership expansion applications; (2) need for establishment of a minimum potential membership as a guideline for granting Federal charters; and (3) need for background checks on FCU charter applicants.

The remaining six issues have arisen from a preliminary report from an NCUA staff committee charged with a comprehensive review of the Agency's field-of-membership and chartering policies and procedures: (4) Need for Board reaffirmation of support for new FCU chartering; (5) need for a clearer standard on applicability of Federal field-of-membership policies to state-chartered credit unions converting to Federal charters; (6) need for new internal procedures for approval of large associational charters with dispersed membership; (7) need for new internal procedures for approval of community FCU charters and field-of-membership expansions; (8) need for clearer standards for mergers involving community FCUs; and (9) need to compile a comprehensive manual containing NCUA's policies and procedures on field-of-membership and chartering matters.

Comment is requested on these and related issues that may assist NCUA in

establishing a comprehensive, consistent field-of-membership policy.

DATE: Comments must be received on or before August 16, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, NCUA, Regional Director, Region IV, 300 Park Blvd., Suite 155, Itasca, Ill. 60143, telephone: (312) 250-6000 or Hattie Ulan, NCUA, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 1987, the NCUA Board published (52 FR 36428) a request for comments on three chartering and field-of-membership matters:

(a) Whether NCUA "should adopt a general charter amendment to allow FCUs to expand their fields of membership to select occupational groups of less than 300 persons within the FCU's operational area * * *

(b) Whether as a "guideline," the "minimum potential membership should be raised to 2,000 for all types of charters."

(c) Whether, with respect to new FCU charter applications, NCUA should: (i) Consolidate the Agency's investigation report forms; (ii) "place greater emphasis on proof of economic feasibility;" (iii) "require a survey of potential membership interest and pledges to participate in the proposed FCU;" (iv) require "a thorough business plan;" and (v) require a "formal investigation of the subscribers, prospective officials and key employees."

Based on the 184 comment letters and concerns voiced to NCUA Board members on other occasions, it became clear that the matters for which comments were requested needed further staff study, and that the whole field of membership and chartering area needed review to assure reasonable and consistent application. The Board established an ad hoc staff committee to undertake this task.

Having met with representatives from NCUA's Regional Offices, credit union associations, and the state regulators, the committee has recommended—and the NCUA Board has approved—seeking public comment on refined versions of the original three proposals and on six other matters.

II. Request for Comment

A. September 1987 Proposals

1. Should NCUA streamline its present procedures for reviewing field-of-membership expansion requests rather than adopt a preapproval process for certain small expansion applications?

This proposal generated the most comments. While generally agreeing that the Agency needs to speed its process of deciding on expansion requests, the comments showed that staff's proposed solution—preapproval of certain small expansion requests—may have created more problems than it would have resolved: What FCU's should be given preapproved authority—FCU's with a 1 or 2 CAMEL rating only (as proposed), or some other group? How would overlap and common bond policies be monitored? Would the policy discourage formation of small, new FCU charters or favor large credit unions? How would service to an improperly-annexed field of membership be discontinued? How and under what circumstances would the preapproval authority be rescinded?

NCUA staff plans to develop alternative procedures to minimize decision time on field-of-membership expansion requests. Such requests will be handled on an administrative priority basis.

2. Should NCUA maintain its existing guideline of 500 potential members as the minimum generally viewed as economically feasible for any type of FCU, while granting Federal charters to smaller groups in proper cases?

NCUA staff's proposal to increase the guideline minimum to 2,000 was not well received. The NCUA Board agrees the proposal could discourage small groups with the capability of establishing an economically viable FCU from applying for a charter. The NCUA Board wants to encourage groups to establish their own charters whenever desired and possible; it therefore proposes to continue using 500 potential members as a benchmark minimum, but grant charters to even small groups clearly demonstrating economic feasibility.

3. Should NCUA proceed to update its chartering forms and procedures?

The last proposal in the September 1987 request for comment was almost universally approved. NCUA is planning to move forward on those changes as proposed. NCUA staff believes that all

background checks (criminal and credit) can be conducted without assessing costs to the applicants.

B. New Matters

4. Does NCUA need to reaffirm its strong support for new FCU charters?

The NCUA staff proposal to ease field-of-membership expansion has led some to question NCUA support for new FCU charters, particularly for smaller groups. That was not the intent, and if a statement of support is needed to dispel the notion, it will be provided. An FCU's success is dependent on service and membership participation, not pre-existence or size. Undeniably, chartering an FCU requires skill and hard work; much depends on the members, particularly the FCU organizers. But skill and hard work are not unique to large groups or existing FCU's.

5. Should the NCUA Board state clearly that a state-chartered credit union converting to Federal charter must conform its field of membership to Federal standards?

There seems to have arisen some doubt whether a state-chartered credit union converting to Federal charter may be permitted to keep a field of membership not in conformity with Federal guidelines. NCUA staff has recommended the Board clearly state that a converting credit union must comply with Federal field-of-membership standards.

6. Should NCUA require a unanimous favorable vote of its six Regional Directors for approval of a new associational Federal charter or expansion of an existing Federal charter for associations: (a) Whose normal service area would cross NCUA regional boundaries; and (b) whose field of membership is 500 or more?

Disapprovals under this system would continue to be appealable to the NCUA Board.

Under the present system, each Regional Director has delegated authority to grant associational Federal charters or expansions for groups with their main offices in the region. This seems to have led to some inconsistencies in application: approval of some charters covering the entire association membership; approvals of others with strict exclusionary clauses to limit overlaps; disapproval of others entirely.

The NCUA Board invites any other comments on the procedures for approving associational charters and substantive guidelines for defining the limits of recognizable associational bonds. The Board wishes to continue to ensure that such charters are granted to

serve the best interest of the prospective membership.

7. Should a community FCU having severe financial difficulties be permitted to merge into an associational or occupational FCU? If so, what should be the effect on the continuing FCU?

Regional directors now generally: (a) Permit an occupational or associational FCU, while maintaining its occupational or associational character, to take in only the existing members of a distressed community FCU; and (b) permit an occupational or associational FCU to take in a community FCU if the continuing credit union qualifies for and becomes a community FCU.

Some Regional Directors have also allowed occupational and associational FCU's to accept distressed community FCU's, with their fields of membership, while maintaining their occupational or associational character. NCUA staff has asked that the NCUA Board confirm that this statutory merger authority will be used: (a) Where a community FCU is in poor financial condition, and (b) where staff has exhausted all reasonable alternatives.

8. Should NCUA's delegation of authority to the Regional Directors to approve community FCU charters and expansion requests be expanded to include: (a) Any request for an increase of 30 percent or less in the field of membership of an existing FCU, and (b) any request where the proposed field of membership would be 100,000 or less for a new or existing FCU?

The current delegation requires NCUA Board approval of all community FCU charter and expansion applications where the proposed field of membership is over 35,000. This has been useful to allow the NCUA Board to monitor closely the types and frequencies of these changes. It may now be appropriate to give greater authority to the Regional Directors, with appeal right to the NCUA Board.

9. Should NCUA compile a comprehensive manual containing NCUA's policies and procedures on chartering, expansion, merger, and related field-of-membership issues?

NCUA's policies and procedures are now set out mainly in IRPS 84-1, a 1980 chartering manual, and a 1985 chartering pamphlet. These documents were written to meet discrete needs and do not mesh well with each other. NCUA staff recommends publication of a manual containing all related field-of-membership policies and procedures, and forms for new charter and expansion applications.

The NCUA Board requests comment on all of the above issues. By the

National Credit Union Administration on June 2, 1988.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-13706 Filed 6-16-88; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-18-AD]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 707/720 series airplanes, which currently requires inspections of the inboard engine nacelle strut attach structure to detect cracks, and repair, if necessary. This action would reduce the repetitive inspection interval for those operators who use the airplanes for short flights by adding a flight cycle upper limit as well as the current flight time limit. Further, a repair procedure listed in the current AD as terminating action is not adequate to prevent further cracking. Airplanes that have been repaired without the installation of the improved nacelle strut support fittings must be repetitively inspected. This action was prompted by a report of an engine separating from an airplane.

DATE: Comments must be received no later than August 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-18-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch,

ANM-120S; telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-18-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On April 26, 1977, the FAA issued AD 77-09-03, Amendment 39-2888 (42 FR 22863; May 5, 1977), to require inspections of the midspar fitting every 1,500 hours time-in-service on certain Boeing Model 707/720 series airplanes with more than 12,000 hours time-in-service.

Since issuance of that AD, a report was received of the separation of an engine with less than 1,500 hours time-in-service since the last inspection. This airplane was being used for short flights. This incident has prompted a re-evaluation of the inspection interval. It has been determined that the number of flight cycles, as well as flight time, is important in determining the repetitive inspection interval. The manufacturer has conducted an analysis which indicates that the repetitive inspection should be accomplished at 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for

Models 707-100, -200, and 720 series airplanes, whichever occurs first.

Additionally, it has been determined that a repair of the fitting, indicated as acceptable terminating action in paragraph D. of AD 77-09-03, is not adequate to prevent future cracking; instead, only the replacement with improved fittings is acceptable for terminating action. Therefore, repetitive inspections are necessary to detect cracking in airplanes that have been repaired without the installation of the improved nacelle strut support fittings.

The FAA has reviewed and approved Boeing 707/720 Service Bulletin No. 3183, Revision 2, dated January 28, 1988, which describes the inspection, repair and replacement procedures to be used on the inboard nacelle strut midspar fittings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the inspection of the inboard nacelle strut midspar fittings and their reinspection interval to be a function of both flight time and flight cycles in accordance with the previously mentioned service bulletin. In addition, terminating action has been revised.

It is estimated that 80 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$25,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 707/720 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for

this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 77-09-03, Amendment 39-2888 (42 FR 22863; May 5, 1977), with the following new airworthiness directive:

Boeing: Applies to Boeing Model 707/720 series airplanes listed in Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988, certificated in any category. Compliance required as indicated, unless already accomplished.

To prevent separation of an inboard engine, accomplish the following:

A. Except as provided in paragraphs B., C., and D., below, prior to the accumulation of 12,000 hours time-in-service, visually inspect the mid-spar support fittings of the inboard nacells for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Thereafter, repeat the inspection at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

B. If the mid-spar support fittings are currently being inspected in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 5, 1977, or Revision 2, dated January 28, 1988, then continue the inspection program in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat the inspections at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. For Model 707-300, -400, and -300B/C series airplanes with more than 500 flight cycles, and Model 707-100, -200, and 720 series airplanes with more than 650 flight cycles, since the last inspection on the effective date of this AD, inspect within the next 100 flight cycles or prior to the accumulation of 1,500 hours time-in-service since the last inspection, whichever occurs first. If any

cracks are found, repair prior to further flight, in accordance with paragraph E., below.

C. If inspections had been terminated under paragraph D. of AD 77-09-03 by repairing the midspar support fittings, within the next 100 hours time-in-service after the effective date of this AD, visually inspect the mid-spar support fittings for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat the inspection at intervals not to exceed 1,500 time-in-service or 600 flight cycles for Models 707-300, -400, and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

D. If inspections had been terminated under paragraph D. of AD 77-09-03, by the replacement of the midspar support fittings with new like fittings, then prior to the new fittings having accumulated 12,000 hours time-in-service or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs later, visually inspect the fittings for cracks in accordance with Boeing Service Bulletin No. 3183, Revision 2, dated January 28, 1988. Repeat at intervals not to exceed 1,500 hours time-in-service or 600 flight cycles for Models 707-300, -400 and -300B/C series airplanes, or 750 flight cycles for Models 707-100, -200, and 720 series airplanes, whichever occurs first. If any cracks are found, repair prior to further flight, in accordance with paragraph E., below.

E. If any cracks are found in the midspar support fittings, prior to further flight remove the fairings over the inboard nacelle strut upper support fittings and conduct an eddy current inspection of the fittings and the upper wing skin at the two most forward fastener holes on the inboard flange of the fittings common to the fittings, the front spar upper chord, and the upper wing skin, in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 5, 1977. Repair all cracks prior to further flight, in accordance with the service bulletin.

F. Terminating action for the requirements of this AD is replacement of the inboard nacelle strut inboard and outboard midspar support fittings, with improved fittings, in accordance with Boeing Service Bulletin No. 3183, Revision 1, dated May 5, 1977, and inspection, modification, or replacement, if necessary, of the inboard nacelle strut overwing fittings to the front spar upper chord in accordance with that service bulletin.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

H. Airplanes with no more than one tang of one inboard nacelle strut mid-spar support fitting failed may be flown in accordance with FAR 21.197 and 21.199 to a base where

repairs required by this AD may be performed.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 8, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13697 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-56-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, which would require replacement or modification of the Generator Control Unit (GCU) filter modules. This proposal is prompted by reports of smoke in the cockpit as a direct result of the GCU filter module failures. This condition, if not corrected, could lead to additional GCU failures producing smoke in the cockpit and partial loss of electrical power.

DATE: Comments must be received no later than August 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Westinghouse, Electrical Systems Division, P.O. Box 989, Lima, Ohio 45802. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Perini, Systems & Equipment Branch, ANM-130S; telephone (206) 431-

1944. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-56-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has received numerous reports of "smoke-in-cockpit" on Boeing Model 737 series airplanes due to GCU filter module failures. In all cases, subsequent investigation revealed that the three-phase capacitor in the GCU filter modules had internally shorted and burned, causing smoke and partial loss of electrical power.

The FAA has reviewed and approved Westinghouse Service Bulletin 87-101 dated March 1987, which describes procedures to replace the existing GCU filter modules with a new improved module design which eliminates the three-phase capacitor assembly; and Westinghouse Service Bulletin 87-102, dated August 1987, which describes procedures for modification of the existing GCU filter modules to correct the deficiency.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement or

modification of the GCU filter modules in accordance with the appropriate service bulletin previously mentioned.

It is estimated that 1,200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$72,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, certificated in any category. Compliance required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent smoke in the cockpit and partial loss of electrical power caused by the failures of the GCU filter modules, accomplish the following:

A. Replace the GCU filter modules in accordance with Westinghouse Service Bulletin 87-101, dated March 1987; or modify the GCU filter modules in accordance with Westinghouse Service Bulletin 87-102, dated March 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Westinghouse, Electrical Systems Division, P.O. Box 989, Lima, Ohio 45802. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way, Seattle Washington.

Issued in Seattle, Washington, on June 8, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-13696 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 146

Privacy Act of 1974; Records Maintained on Individuals

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission is proposing to revise its Privacy Act regulations so as to exempt from certain provisions of the Privacy Act a new system of records entitled "Exemption Closed Commission meetings." This new system is added to

the Commission's system of records in an accompanying notice.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Ellyn S. Roth, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

Background

In an accompanying notice the Commodity Futures Trading Commission ("Commission") is providing notice of existence of two systems of records, CFTC-30 ("Open Commission Meetings") and CFTC-31 ("Exempted Closed Commission Meetings"). In compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act") and the Commission's regulations promulgated to implement the Sunshine Act, 17 CFR Part 147, the Commission maintains electronic recordings, transcripts or sets of minutes of all closed Commission meetings or closed portions of Commission meetings. It is also the Commission's practice to record its meetings, which are held open to public observation. With respect to all of its meetings, whether open or closed, the Commission maintains indices of the meetings, organized by year and subdivided by subject. The indices contain the names of some individuals, and the corresponding recordings, transcripts or minutes contain some information about those individuals.

These indices and records constitute two systems or records under the Privacy Act of 1974, 5 U.S.C. 552a. One system consists of the recordings or Commission meetings open to the public. The other system consists of the recordings of closed Commission meetings, which, as explained below, the Commission proposes to exempt from certain provisions of the Privacy Act.

Proposed Amendment to Privacy Act Regulations

The Commission proposes to amend § 146.12 of its regulations in order to exempt the system containing information on closed Commission meetings from certain notification and access provisions of the Privacy Act. Pursuant to section (k) of the Privacy

Act, 5 U.S.C. 552a(k), an agency may promulgate rules to exempt any system of records from certain notification and access requirements of the Privacy Act if the information in the system falls under any of the enumerated categories. The Commission believes that much of the information in this system falls under the categories set forth in sections (k)(2) and (k)(5). The information in this system includes (a) investigatory materials compiled for law enforcement purposes whose disclosure the Commission has determined could impair the effectiveness and orderly conduct of the Commission's regulatory, enforcement and contract market surveillance programs (section (k)(2)) or (b) investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment with the Commission to the extent that it identifies a confidential source (section (k)(5)).

Accordingly, the Commission proposes that 17 CFR 146.12 be amended so as to exempt those records which fall within the categories enumerated in sections (k)(2) and (k)(5) of the Privacy Act from the notification procedures, record access procedures and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of record in the system be described.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these proposed rules would impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule proposed herein, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 146

Privacy Act, Records maintained on individuals.

In consideration of the foregoing, and pursuant to the authority contained in section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and in the Privacy Act, 5 U.S.C. 552a, the

Commission hereby proposes to amend Part 146 of Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for Part 146 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a); sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Section 146.12(a) is proposed to be amended by revising the second sentence to read as follows:

§ 146.12 Exemptions.

(a) * * * Materials exempted under this paragraph are contained in the system of records entitled "Exempted Investigatory Records" and/or in the system of records entitled "Exempted Closed Commission Meetings." * * *

3. Section 146.12(b) is proposed to be amended by revising the last sentence to read as follows:

(b) * * * Materials exempted under this paragraph are included in the system of records entitled "Exempted Employee Background Investigation Material" and/or in the system of records entitled "Exempted Closed Commission Meetings." * * *

Issued in Washington, DC, on June 13, 1988 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-13713 Filed 6-16-88; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6779; File No. S7-9-88]

Offshore Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment a proposed Regulation intended to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933. The Regulation would provide that any offer or sale that occurs within the United States is subject to section 5 of the Securities Act and any offer or sale that occurs outside the United States is not subject to section 5. The Regulation would set forth factors considered to be important in determining whether an offer or sale

occurs outside the United States. Additionally, the Regulation would provide "safe harbors" for specified transactions. Offers and sales meeting all of the conditions of the applicable safe harbor would be deemed to be outside the United States and, therefore, not subject to section 5. The Regulation, as proposed, would not be available with respect to offers and sales or securities issued by investment companies required to register under the Investment Company Act of 1940.

DATE: Comments should be received on or before September 15, 1988.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-9-88. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Samuel Wolff, Office of International Corporate Finance, (202) 272-3246, or Sara Hanks, Office of Chief Counsel (202) 272-2573, Division of Corporate Finance, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549.

I. Executive Summary

The Commission is proposing Regulation S to clarify the extraterritorial application of the registration provisions of the Securities Act of 1933 (the "Securities Act").¹ The Regulation would consist of a general statement of applicability of the registration provisions ("General Statement") and safe harbors. The General Statement would provide that section 5 of the Securities Act² does not apply to offers or sales of securities that occur outside the United States. In order for a transaction to fall within the provisions of the General Statement, both the sale and the offer relating to that sale would have to be made outside the United States. The General Statement would provide that the elements to be examined in determining whether an offer or sale is made outside the United States include the locus of the offer or sale, the absence of directed selling efforts in the United States, the likelihood of the securities sold coming to rest outside the United States, and the justified expectations of the parties to the transaction as to the applicability of

¹ 15 U.S.C. 77a *et seq.*

² 15 U.S.C. 77e.

the registration requirements of the U.S. securities laws.

Proposed Regulation S also would include safe harbors which rely significantly on the periodic reporting system of the Securities Exchange Act of 1934 (the "Exchange Act").³ One safe harbor applies to offers and sales by issuers and their affiliates, and securities professionals involved in the distribution process pursuant to contract and their affiliates (the "issuer safe harbor"), and the other to resales by other persons (the "resale safe harbor"). An offer, sale or resale of securities that satisfies all conditions of the applicable safe harbor would be deemed to be outside the United States within the meaning of the General Statement and thus not subject to the registration requirements of section 5 of the Securities Act.

Two general conditions would apply to the safe harbors. First, any offer or sale of securities must be made in an "offshore transaction," which would require the seller to ensure either that the buyer is offshore at the time of the transaction and that the transaction is consummated overseas, or that the sale is made on or through the facilities of an established foreign securities exchange. Second, in no event could a "directed selling effort" be made in the United States in connection with an offer or sale of securities made under a safe harbor.

In addition to these general requirements, the issuer safe harbor would distinguish several classes of securities, based on the nationality and reporting status of the issuer and the degree of U.S. market interest in the issuer's securities, and would require varying procedural safeguards to ensure that the securities offered come to rest offshore. Securities of foreign issuers in which there is no substantial U.S. market interest could be offered and sold offshore without any restrictions on resale beyond the general requirements, while securities of other issuers would be subject to restrictions on offer and sale in the United States or to U.S. persons. The resale safe harbor would permit persons not affiliated with either the issuer or securities professionals involved in the distribution process to resell any securities in generally the same manner in which they could be sold in a primary distribution, and also to resell certain securities on or through the facilities of an established foreign securities exchange.

The safe harbors would not be exclusive and are not intended to create

a presumption that any transaction failing to meet their terms is subject to section 5. Reliance on one of the safe harbors would not affect the availability of any exemption from the Securities Act registration requirements upon which a person or entity may be able to rely.

Proposed Regulation S would relate solely to the applicability of the registration requirements of section 5 of the Securities Act. As proposed, the Regulation would not be applicable to offers and sales of securities issued by investment companies required to register under the Investment Company Act of 1940 (the "1940 Act").⁴ The Regulation is not intended to affect in any way the scope or applicability of the antifraud provisions of the Federal securities laws.

II. Background

A. Section 5 and Release No. 33-4708

The registration requirements of the Securities Act apply to any offer or sale of a security involving interstate commerce or use of the mails, unless an exemption is available.⁵ The term "interstate commerce" includes "trade or commerce in securities or any transaction or communication relating thereto . . . between any foreign country and any State, Territory or the District of Columbia . . ."⁶ The registration requirements thus literally apply to any offer or sale of securities to any person if the means of interstate commerce or the mails are used.⁷

The Commission, however, historically has recognized that registration obligations should not be imposed on offerings with only incidental jurisdictional contacts. In Securities Act Release No. 4708,⁸ the Commission stated that it would not take any enforcement action for failure to register securities of U.S. corporations distributed abroad solely to foreign nationals, even though the means of interstate commerce are used, if the distribution is effected in a manner that

will result in the securities coming to rest abroad.⁹

Numerous procedures have been employed since the issuance of Release 4708 to ensure that securities sold in reliance upon the Release are sold to non-U.S. persons and "come to rest" abroad. These procedures frequently have been the subject of no-action letters issued by the Commission's staff. In the case of non-convertible debt securities, the staff has granted a number of no-action letters involving, in addition to other restrictions, a 90-day period during which no sales would be permitted to be made in the United States or to U.S. nationals.¹⁰ The staff has also granted no-action letters involving equity securities¹¹ and

³ Although Release 4708 specifically refers only to domestic issuers, the staff also has applied it to offerings by foreign issuers. See, e.g., no-action letters to *Vizcaya International N.V.* (Apr. 4, 1973); *Republic of Iceland* (Mar. 19, 1971).

¹⁰ E.g., *Procter & Gamble Co.* (Feb. 21, 1985). The request for no-action treatment proposed the following procedures designed to ensure that the securities would come to rest abroad: Provisions would be placed in agreements with underwriters and dealers in any selling group requiring observation of restrictions on sales to U.S. persons for 90 days after completion of the distribution; a statement regarding the restrictions on sales to U.S. persons would be placed in invitation telexes, the prospectus, press releases and tombstones; confirmations would be delivered in sales to other dealers restating these restrictions; a statement would be placed in requests for all-sold telexes requiring confirmation from underwriters and dealers that the securities were sold outside the United States to persons other than U.S. persons; and at the closing, a temporary global security would be delivered, which would be exchangeable for definitive securities only after at least 90 days following completion of the distribution and certification of non-U.S. beneficial ownership. See also, *Fairchild Camera and Instrument International Finance N.V.* (Dec. 15, 1976); *Raymond International Inc.* (June 28, 1976); *The Singer Company* (Sept. 3, 1974).

¹¹ E.g., *InfraRed Associates, Inc.* (Oct. 14, 1985). This no-action request proposed the following procedures designed to ensure that the securities would come to rest abroad: An undertaking by the selling agent not to offer the shares in North America (United States and Canada) or to North American persons for the 12-month period following completion of the offering; a conspicuous legend on the cover page of the prospectus stating that the securities were not registered under the Securities Act and could not be offered or sold in North America or to North American persons for 12 months after the completion of the offering, and then only if the securities were registered, sold pursuant to an exemption from registration, or sold on the Stock Exchange in London; a requirement that, prior to any transfer of the shares, the purchaser would certify that he agreed to such conditions and was not a North American person and was not acquiring the shares for any such person; a provision in the bylaws of the issuer requiring the directors to refuse to register transfers of the shares to North American persons prior to the end of the 12-month period; and a legend on the certificates evidencing the shares sold in the offering as well as shares transferred or exchanged, reflecting the restrictions on resale.

⁴ 15 U.S.C. 80a et seq.

⁵ Securities Act Section 5 (15 U.S.C. 77e).

⁶ Securities Act Section 2(7) (15 U.S.C. 77b(7)).

⁷ *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326, 1335 (2d Cir. 1972); cf. *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 357 (9th Cir. 1973).

⁸ Release No. 33-4708 [July 9, 1964] (29 FR 9828) ("Release 4708"); cf. *IIT v. Vencap Ltd.*, 519 F.2d 1001, 1016 (2d Cir.) (1975), quoting *Steele v. Bulova Watch Co., Inc.*, 344 U.S. 280, 282-283 (1972) (resolution of jurisdictional questions in the securities area "depends on construction of exercised congressional power not the limitations upon that power itself").

⁹ 15 U.S.C. 78a et seq.

convertible securities¹² where more stringent offering procedures were employed.

While the Commission did not define the term "U.S. person" in Release 4708,¹³ the staff has construed this term in the no-action and interpretative process. As a general matter, the term "U.S. persons" has been considered to include citizens and residents of the United States as well as organizations formed under the laws of the United States or any political subdivision thereof.¹⁴ Foreign agencies and branches of U.S. banks and insurance companies are not treated as "U.S. persons" if operating for valid business reasons as locally regulated entities.¹⁵

Although sales generally were not made to U.S. persons, including U.S. citizens residing overseas, in an offering made in reliance upon Release 4708, the staff recently has taken no-action positions with respect to such sales under narrow circumstances. In *French Privatization Program*,¹⁶ the staff issued a no-action letter in connection with a French privatization program, where sales would be made to U.S. citizens residing in France as required by French law.

The staff traditionally has not expressed any view as to when or under what circumstances securities issued pursuant to Release 4708 could be resold in the United States or to U.S. persons. Rather, the staff has indicated that resales may only be made in compliance with the registration requirements of the Securities Act or an exemption therefrom.¹⁷ In *InfraRed Associates, Inc.*,¹⁸ however, the staff noted that, 12 months after the end of the offering, the securities could be resold pursuant to registration under the Securities Act, an exemption therefrom "or on the London Stock Exchange in accordance with procedures approved by the London Stock Exchange."

¹² *Pan American World Airways, Inc.* (June 30, 1975); *Sperry Rand Corporation* (Mar. 1, 1974).

¹³ Release 4708 uses, without definition, the terms "American investors," "American nationals" and "foreign nationals." The term "U.S. person" later began to be used in no-action letters.

¹⁴ See, e.g., *Goldman Sachs & Co.* (Oct. 3, 1985); *Executive Management Inc.* (Oct. 28, 1983). See also *infra* nn. 136-138 and accompanying text.

¹⁵ *Foreign Agencies and Branches of United States Banks and Insurance Companies* (Feb. 25, 1988); *Dresser Industries Canada, Ltd.* (Oct. 31, 1977); *Viacaya International N.V.* (Apr. 4, 1973); cf. *First Interstate Bancorp.* (Mar. 15, 1985).

¹⁶ (April 17, 1987). None of the issuers with offerings covered by this letter had an active public market for its securities in the United States at the time of the privatization, other than a market for non-convertible debt securities with maturities of less than one year.

¹⁷ E.g., *Pratt & Gamble Co.*, *supra* n. 9.

¹⁸ *Supra* n. 11.

The staff also has construed Release 4708 to permit resales abroad of securities not acquired in reliance on the Release. In a series of no-action letters, the staff has taken the position that a holder of restricted securities may resell the securities abroad without registration in reliance on Release 4708.¹⁹ In these cases, the issuers were not reporting companies and had no active market for their securities in the United States. The staff has also taken the position that it would be permissible for investors purchasing securities in a private offering in the United States to resell the securities on the Paris Bourse without investigation as to the nationality or residence of the counterparty under limited circumstances involving French privatization offerings.²⁰ In view of the limited U.S. investor participation on the Bourse and the absence of an active market for the securities in the United States, such resales were considered not to require application of the registration provisions of the Securities Act.²¹

With respect to contemporaneous U.S. and offshore offerings, the Commission stated in Release 4708 that it would not integrate an offering made abroad solely to foreign investors with a simultaneous private placement in the United States. The Commission reiterated this non-integration position in Regulation D,²² and the staff elaborated upon the position through its no-action and interpretative letters.²³ For example, the staff has not integrated intrastate offerings made under section 3(a)(11) of the Securities Act²⁴ and Rule 147²⁵ thereunder with foreign offerings made under Release 4708.²⁶ Similarly, the

¹⁹ *WCBS Group, PLC* (Jan. 8, 1987); *Wordplex Information Systems, PLC* (Dec. 5, 1985); *Trilogy Resource Corporation* (Aug. 3, 1984).

²⁰ *College Retirement Equities Fund* (Feb. 18, 1987).

²¹ See *Internationalization of the Securities Markets*, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce, III-321 (July 27, 1987) ("Report on Internationalization").

²² See Preliminary Note 7 to Regulation D (17 CFR 230.501 through 230.506).

²³ E.g., *College Retirement Equities Fund* (June 4, 1987) (presence of U.S. private offerings would not impose on concurrent foreign public offerings any restrictions in addition to those, if any, that would be required in the absence of the U.S. private offering); *College Retirement Equities Fund* (Feb. 18, 1987).

²⁴ Section 3(a)(11) (15 U.S.C. 77c(a)(11)).

²⁵ 17 CFR 230.147.

²⁶ *Commonwealth Equity Trust* (Feb. 20, 1987) (Resale restrictions of Rule 147 (e) and (f) applied to foreign offering); *Scientific Manufacturing, Inc.* (June 13, 1983). To the extent that these letters required restrictions on the foreign offerings which would not have been required in the absence of the intrastate offering, they would be modified by the proposed Regulation.

staff has not objected to unregistered public offerings made outside the United States concurrently with registered offerings of substantially similar securities in the United States.²⁷ While it is anticipated that the parameters of the non-integration position will continue to be developed through the no-action and interpretative process, it is the general view that exempt or registered domestic offerings and offshore offerings meeting the conditions of the proposed rules should not be integrated.

In 1970 the Commission adopted guidelines concerning the offer and sale outside the United States of shares of registered open-end investment companies.²⁸ The Commission indicated that the position taken in Release 4708 would not be applied to foreign sales of investment company securities.²⁹

B. Developments in the International Capital Markets

Since the issuance of Release 4708 in 1964, dramatic changes have occurred in the international capital markets. The most significant of these changes is the tremendous growth of the Eurobond market and the recent development of the Euroequity market. Many factors have contributed to these developments.

The Interest Equalization Tax Act of 1964 ("IET"), which was intended to address the United States' balance of payment deficit by discouraging U.S. investors from investing in foreign securities, caused foreign borrowers to turn to foreign markets for capital.³⁰ The imposition in 1965 of voluntary restraints on capital formation by multinational corporations resulted in United States corporations financing their foreign operations from abroad and when this program became mandatory in 1968, an immediate surge of dollar-denominated Eurobonds issued by United States corporations occurred.³¹ The passage of the Tax Reform Act of 1984 further facilitated Eurobond financings by United States issuers by

²⁷ *Goldman Sachs & Co.* (Oct. 3, 1985); *Williams Island Associates Ltd.* (June 3, 1983).

²⁸ Release No. 33-5068 (June 23, 1970) (35 FR 12103).

²⁹ *Id.* The guidelines set forth in Release 5068 concerning offers and sales of investment company securities would not be affected by proposed Regulation S. See *infra* n. 73 and accompanying text.

³⁰ See Haseltine, *United States Tax and Securities Laws: Working "Together" Towards Different Goals in Eurobond Financings* 11 Md. J. Int'l L. & Trade 221, 222 (Summer 1987); *Report on Internationalization* at III-30, 31. Although the IET was allowed to expire in 1974, the Eurobond market continued to grow.

³¹ Fisher, *International Bonds* 21 (1981).

repealing the 30 percent withholding tax on payments of "portfolio interest" on debt securities issued after July 18, 1984 to non-U.S. holders.³²

More recent regulatory developments have also contributed to the tremendous growth of world financial markets. Capital market restrictions have been relaxed in many countries, as have other economic restrictions such as exchange controls, foreign investment restrictions, and fixed commission rates.³³ Technological advances have facilitated the internationalization of the securities markets, with transactions taking place through an increasingly electronic and computerized global financial network.³⁴ Automated quotation, collection and dissemination systems already are in extensive use.³⁵

The revolutionary changes in the international market are reflected in the volume of international offerings and global trading. The international bond market grew at a compound annual rate of 21 percent from 1976-1986.³⁶ Between 1980 and 1986, international bond issues increased from \$38.3 billion to \$225.4 billion,³⁷ followed by a decline in 1987 to \$177 billion due to effects from the October market break and other economic factors.³⁸

In recent years, U.S. issuers have been among the largest borrowers in the international bond markets.³⁹ In 1986, U.S. issuers tapped the international bond market for a record \$43.7 billion, or 19 percent of gross bond offerings in international markets.⁴⁰ Eurobond

issues accounted for 88 percent of the proceeds raised by U.S. issuers in the international bond markets during 1986.⁴¹ In 1987, U.S. issuers raised approximately \$21 billion in the international bond market.⁴²

Almost non-existent five years ago, the Euroequity market has recently become established and has shown remarkable growth.⁴³ Euroequities recently brought to market have included both international issues in the Euromarket as well as foreign tranches of domestic issues directed to particular foreign equity markets.⁴⁴ Euroequity offerings of common and preferred stock amounted to approximately \$20 billion in 1987 compared to only about \$200 million as recently as 1983.⁴⁵ International equity offerings have declined in the wake of the October 1987 market break. During the twelve months prior to the market break, Euroequity offerings averaged \$2 billion per month, compared to an average of \$300 million per month since that time.⁴⁶

The global character of the securities markets also is reflected in the rapid growth of transactions by U.S. and foreign investors in markets outside the investor's home country.⁴⁷ U.S. investors' purchases and sales of foreign stocks reached a record \$187 billion in 1987, while foreign investors' activity in U.S. domestic corporate stock was a record \$481.5 billion.⁴⁸ These trends have been even more pronounced with respect to transactions in debt securities. U.S. investors' purchases and sales of foreign debt securities reached a record \$404 billion in 1987, while foreign investors' activity in U.S. debt securities was a record \$2,832 billion.⁴⁹ Larger amounts of capital than ever before are crossing national borders as investors throughout the world increase their purchases of foreign securities.⁵⁰

C. Developments in the U.S. Disclosure System

In the 24 years since the issuance of Release 4708, the disclosure systems under the Securities Act and the

Exchange Act also have undergone substantial evolution. In particular, the Exchange Act reporting system has expanded, both with respect to the number of companies covered and the scope of its requirements, to become the primary source of federally mandated information about publicly owned issuers.

In 1964, section 12(g)⁵¹ was added to the Exchange Act. As a result, for the first time companies whose securities were not listed on a stock exchange were required, if they met specified criteria,⁵² to register their securities under the Exchange Act and comply with the concomitant periodic reporting and other disclosure requirements.⁵³

Through rulemaking, the Commission continued to make the Exchange Act disclosure system more comprehensive. In 1970 the current system of quarterly reporting on Form 10-Q was adopted,⁵⁴ and the Exchange Act registration form, Form 10, was amended to amplify the disclosure requirements.⁵⁵ Amendments to the proxy and information statement rules in 1974 required basic financial and other information to be included in the annual report to security holders.⁵⁶ This trend of improving the quality and timing of Exchange Act disclosure continued throughout the 1970s and 1980s and culminated in the development of the integrated disclosure system, in which Exchange Act reports serve as the principal mechanism for informing the marketplace in both the

⁵¹ 15 U.S.C. 78b(g).

⁵² Section 12(g) requires that an issuer with assets over \$1,000,000 register a class of equity securities held of record by 500 or more persons. Currently, through the exercise of the Commission's rulemaking authority, Exchange Act registration is not required unless the issuer's assets exceed \$5,000,000. See Rule 12g-1 (17 CFR 240.12g-1). For exemptions from Exchange Act registration for American Depositary Receipts and securities of specified foreign issuers, see Rule 12g3-2 (17 CFR 240.12g3-2).

⁵³ The registrant is required to file reports pursuant to section 13(a) of the Exchange Act (15 U.S.C. 78m(a)) (currently, annual reports on Form 10-K (17 CFR 249.310), quarterly reports on Form 10-Q (17 CFR 249.308(a)), and current reports on Form 8-K (17 CFR 249.308)). The registrant and certain persons owning securities of or engaging in transactions with respect to the registrant are required to comply with the beneficial ownership requirements of section 13(d) (15 U.S.C. 78m(d)), the proxy, information statement and tender offer requirements of section 14 (15 U.S.C. 78n), and the ownership reporting and short-swing profit recovery provisions of section 16 (15 U.S.C. 78p).

⁵⁴ Release No. 34-9004 (Nov. 2, 1970) (35 FR 17537).

⁵⁵ 17 CFR 249.210, amended in Release No. 34-8996 (Oct. 14, 1970) (35 FR 16537).

⁵⁶ Rules 14a-3 and 14c-3 (17 CFR 240.14a-3 and 240.14c-3), as amended in Release No. 34-11079 (Oct. 31, 1974) (39 FR 40768).

³² Haseltine *supra* n. 30, at 234-236.

³³ Fixed commissions have been eliminated in the United States, the United Kingdom, Australia, Canada and Denmark. Report on Internationalization at II-17-18.

³⁴ Report on Internationalization at II-5.

³⁵ D.E. Ayling, *The Internationalization of Stock Markets* 181-195 (1986).

³⁶ OECD Financial Statistics Monthly (various issues); Report on Internationalization at II-35. An "international bond" is a debt security that is issued originally outside the country of the borrower. These usually take the form of Eurobonds or foreign bonds. A "Eurobond" is a debt security issued multinationally through an international syndicate in a currency other than that of the country in which the bond is issued. A "foreign bond" is a debt security issued in a country other than that of the issuer, sold through a syndicate located primarily in the country of the distribution, and denominated in the currency of that country.

³⁷ *Id.* at II-2.

³⁸ OECD Financial Statistics Monthly (1988).

³⁹ Report on Internationalization at II-38. U.S. issuers were the largest borrowers in this market in 1986, *id.*, while Japanese borrowers were the largest in 1987. OECD Financial Statistics Monthly (March 1988).

⁴⁰ OECD Financial Statistics Monthly (March 1988).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Euroequities include common and preferred stocks distributed to investors in one or several markets outside the issuer's domestic market by a syndicate of international securities firms and banks.

⁴⁴ *Raising Equity in the Euromarket* 11, Credit Suisse First Boston, London (1986); Report on Internationalization at II-53.

⁴⁵ *Euromoney Bondware*; see also Report on Internationalization at II-2.

⁴⁶ *Euromoney Bondware*.

⁴⁷ *Id.* at II-2.

⁴⁸ U.S. Treasury Bulletin (Winter 1988).

⁴⁹ *Id.*

⁵⁰ *Id.*

primary offering and secondary trading contests.⁵⁷

Similarly, the federal regulatory scheme for foreign private issuers has evolved to focus and depend on the periodic reports filed by foreign issuers under the Exchange Act. The modern phase of this process began in 1979 with the adoption of Form 20-F⁵⁸ to be used by foreign private issuers both to register securities under the Exchange Act and thereafter as an annual reporting form. Form 20-F is also used as one of the bases for disclosure under the Securities Act by foreign issuers registering securities on Forms F-1, F-2, F-3, and F-4.

The development of the integrated disclosure system made possible the implementation of shelf registration.⁵⁹ Through its reliance on the Exchange Act reporting system, shelf registration allows qualifying domestic and foreign issuers to sell securities without having to await Commission action each time a new offering commences.

III. Discussion of Proposed Regulation S

The development of active international trading markets and the significant increase in offshore offerings of securities, as well as the significant participation by U.S. investors in foreign markets, present numerous questions under the U.S. securities laws. For companies raising capital abroad, the principal issue under the federal securities laws is the reach of the registration requirements under section 5 of the Securities Act across national boundaries.

The Regulation proposed today is based on a territorial approach to section 5 of the Securities Act.⁶⁰ Under such an approach, the registration of securities is intended to protect the U.S. capital markets and all investors purchasing in the U.S. market, whether U.S. or foreign nationals. Principles of comity⁶¹ and reasonable expectations

of participants in the global markets⁶² justify reliance on laws applicable in jurisdictions outside the United States to define disclosure requirements for transactions effected offshore. The territorial approach recognizes the primary of the laws in which a market is located. As investors choose their markets, they would choose the disclosure requirements applicable to such markets.⁶³ As indicated below, however, this territorial approach to the application of the registration provisions would not affect the broad reach of the antifraud provisions of the Federal securities laws.⁶⁴

The safe harbors proposed today are founded upon three basic propositions. First, the safe harbors would recognize and give effect to principles of comity. Foreign issuers with no substantial U.S. market interest would not be required to adopt any specific "coming to rest" restrictions in an offshore offering.⁶⁵ The safe harbor recognizes that there is little reason that offshore offerings by foreign issuers with no substantial U.S. market interest should have implications under the registration provisions of U.S. securities laws.

The second proposition is to ensure against an indirect distribution in the

(H. Lauterpacht ed., 8th ed. 1955); T.H. Lauterpacht, *International Law* 44-46 (1970). Among the values stressed by the doctrine of comity is "the limited application of sovereign powers to extraterritorial events and persons." *Offshore Funds and Rule 10b-5: An International Law Approach to Extraterritorial Jurisdiction Under the Securities Exchange Act of 1934*, 8 *Fordham Int'l L. J.* 410 (1984-1985); citing Akehurst, *Jurisdiction in International Law*, 1972-1973 *Brit. Y.B. Int'l L.* 214-215; I. Brownlie, *Principles of Public International Law* 31 (3d ed. 1979).

⁶² See *infra* n. 92 and accompanying text.

⁶³ The territorial approach would also lessen the distinction between purchases of securities in the primary markets and the secondary markets by U.S. investors. Sales of securities abroad by an issuer may raise section 5 questions, while sales of these same securities a few months later in the secondary market do not implicate the U.S. securities laws at all. This dichotomy occurs because, pursuant to the Securities Act, registration is generally required for offers or sales of new offerings of securities by issuers or affiliates, while secondary trades are exempt from registration under the Securities Act. The Exchange Act, which requires periodic reporting of information by issuers with securities traded in U.S. markets, does not extend to securities of foreign issuers traded only in foreign markets.

⁶⁴ See *infra* nn. 70-72 and accompanying text. The Commission stated in Release 4708 that "a distribution by a U.S. corporation through the facilities of Canadian Stock Exchanges may be expected to flow into the hands of American investors and may therefore be subject to registration." Given the dramatic changes in the world capital markets since 1964, the Commission is no longer of the view that the Canadian markets should be singled out for special treatment under section 5. Offers and sales made in Canada will therefore be treated in the same way as those made in any other foreign jurisdiction.

⁶⁵ Proposed Rule 905(a).

U.S. markets. The issuer safe harbor thus not only requires offers and sales to be made offshore⁶⁶ and prohibits directed selling efforts in the United States during the pendency of an offshore distribution,⁶⁷ but in general also conditions its availability on other restrictions designed to ensure that securities come to rest abroad.⁶⁸

The third proposition is that periodic reporting under the Exchange Act can be relied upon for the protection of investors once the marketing effort has been completed. After the foreign distribution has been completed and the marketing efforts have terminated, routine secondary trading may begin as a matter of course. The periodic reporting requirements of the Exchange Act would protect investors in the U.S. market by assuring that information concerning the issuer would be available. Where issuers are not subject to the reporting requirements of the Exchange Act, resale restrictions previously developed under Release 4708 to protect against flowback would continue.⁶⁹

Proposed Regulation S relates solely to the applicability of the registration requirements of section 5 of the Securities Act, and is not intended to affect the scope or extraterritorial application of the antifraud or other provisions of the federal securities laws. The antifraud provisions have been broadly applied by the courts to protect U.S. investors and investors in U.S. markets where either significant conduct occurs within the United States (the "conduct" test)⁷⁰ or the conduct occurs outside the United States but has a significant impact within the United States or on the interests of U.S. investors (the "effects" test).⁷¹ It is generally accepted,

⁶⁶ Proposed Rule 904(a).

⁶⁷ Proposed Rule 904(b).

⁶⁸ Proposed Rule 905(b), (c); cf. Proposed Rule 905(a) (no specific "coming to rest" restrictions for securities of certain non-reporting foreign issuers).

⁶⁹ Proposed Rule 905(c).

⁷⁰ E.g., *SEC v. Kasser*, 548 F.2d 100, 114 (3d Cir.), cert. denied, 431 U.S. 938 (1977) ("The federal securities laws, in our view, do grant jurisdiction in transnational securities cases where at least some activity designed to further a fraudulent scheme occurs within this country"); *HT v. Vencap, Ltd.*, 519 F.2d 1001 (2d Cir. 1975); *Leasco Data Processing Equipment Corp. v. Maxwell*, 468 F.2d 1326 (2d Cir. 1972).

⁷¹ E.g., *Des Brisay v. Goldfield Corp.*, 549 F.2d 133 (9th Cir. 1977); *Schoenbaum v. Firstbrook*, 405 F.2d 200, rev'd on other grounds, 405 F.2d 215 (2d Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969).

The "conduct" and "effects" tests, either of which can independently support a finding of jurisdiction under the antifraud provisions of the federal securities laws, are derived from the Second Restatement. See also ALI Code section 1905, which incorporated much of the existing law on the

however, that different considerations apply to the extraterritorial application of the antifraud provisions than to the registration provisions of the Securities Act.⁷² While it may not be necessary for a court to require that securities sold in a transaction that occurs outside the United States, although touching this country through conduct or effects, be registered under U.S. securities laws, the U.S. antifraud provisions should be broadly interpreted to rectify the damage suffered as a result of any fraudulent conduct.

Proposed Rule 901(c) would specifically provide that Regulation S would not apply to offers and sales of securities issued by an investment company required to register under the 1940 Act. A U.S. investment company that, using any means of interstate commerce, sold its shares to foreigners generally would be required to register under the 1940 Act.⁷³ Generally, under applicable Commission rules and forms, a registered investment company will file one registration statement to satisfy both the 1940 Act and Securities Act registration requirements, and will provide investors with a prospectus that includes information about matters subject to substantive regulation under the 1940 Act.⁷⁴ Requiring registration under the Securities Act for offers and sales of securities of such companies effectuates the policies of the 1940 Act, by ensuring that prospective investors receive this information. In addition, it may be reasonable to assume that

extraterritorial application of the antifraud provisions of the federal securities laws abroad. The Revised Restatement, sections 403, 416, suggests a different direction for the development of jurisdictional analysis. See Goelzer, Stillman, Walter, Sullivan and Michael, *The Draft Restatement: A Critique from a Securities Law Perspective*, 19 Int'l Law. 431 (Spring 1985); see also *Report on Internationalization at VII-20, 23.*

⁷² *Bersch v. Drexel Firestone Inc.*, 519 F.2d 974, 986 (2d Cir.), cert. denied, 423 U.S. 1018 (1975) ("It is elementary that the antifraud provisions of the federal securities laws apply to many transactions which are neither within the registration requirements nor on organized American markets"); see also *ITT v. Cornfeld*, 619 F.2d 909, 921 (2d Cir. 1980), where the court stated in dicta that "[t]he problem of conflict between our laws and that of a foreign government is much less when the issue is the enforcement of the antifraud sections of the securities laws than with such provisions as those requiring registration of persons or securities." See also Johnson, *Application of the Federal Securities Laws to International Securities Transactions*, 45 Alb. L. Rev. 890, 925-26 (1981) ("Where more technical provisions are involved, [such as the registration provisions,] the courts and the SEC may be reluctant to extend their reach to international transactions.")

⁷³ See section 7 of the 1940 Act, 15 U.S.C. 80a-7.

⁷⁴ These matters include, for example, policies that can be changed only by shareholder vote, investment restrictions, and procedures for valuation of portfolio securities and pricing and processing purchase and redemption requests.

investors would expect the activities of a U.S. investment company subject to registration and regulation under the 1940 Act to be subject to Securities Act registration as well. Investment companies organized in the United States and directed to foreign investors typically invest in the securities of U.S. issuers. Thus, an investor in such an investment company in effect chooses to invest in the U.S. capital markets by obtaining the services of the U.S. manager of that investment company. Finally, with respect to mutual funds and unit investment trusts, requiring Securities Act disclosure at the point of sale helps to protect the U.S. securities markets as a whole by ensuring that foreign investors will not seek redemptions which could require the sale of portfolio securities because of a later realization that they had been inadequately informed about their investment.

Accordingly, as proposed, Regulation S would maintain the historical distinction between investment company and other securities,⁷⁵ and would not be available with respect to offers and sales of securities issued by investment companies registered or required to be registered under the 1940 Act. Nonetheless, the Commission solicits comments as to whether Regulation S should be revised to allow its use for offers and sales of investment company securities and, if so, how the concerns outlined above could be addressed.

In view of the objectives of Regulation S and the policies underlying the Securities Act, the Regulation would not be available for any transaction or chain of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration obligation of the Securities Act with respect to a public offering in the United States. In such cases, registration under the Securities Act would be required.

Until the Commission takes action with respect to proposed Regulation S, the staff will not issue interpretive or no-action letters with respect to Release 4708. If Regulation S is adopted, the staff will issue interpretive letters concerning the safe harbor provisions but not the General Statement, and will not issue no-action letters as to whether a transaction falls within safe harbor provisions or the General Statement.

⁷⁵ See Release No. 33-5068 [June 23, 1970], *supra*, n. 28.

A. General Statement

Proposed Rule 901(a) provides a general statement of the applicability of the registration provisions of the Securities Act. The General Statement provides that any offer, offer to sell, offer for sale, sale or offer to buy that occurs within the United States is subject to section 5 of the Securities Act, while any offer or sale that occurs outside the United States is not subject to section 5.⁷⁶ Determining whether a transaction is outside the United States must be based on the facts and circumstances of each case.

Proposing Rule 901(b) is intended to set forth those factors which should be examined to determine whether the transaction is outside the United States and, therefore, outside the ambit of section 5. If it could be demonstrated, in light of the enumerated factors, that an offer or sale of securities occurred "outside the United States," a person could carry out that offer or sale without registration, regardless of whether the conditions of the safe harbor were met. For a transaction to qualify under the General Statement, both the sale and the offer pursuant to which it was made be outside the United States. The proposed rule enumerates four categories of factors to be considered in making the determination as to whether a transaction occurs outside the United States. Comment is requested on the appropriateness and sufficiency of the factors enumerated.

1. Locus of Offer and Sale

The first factor set forth in the proposed rule is the locus of the constituent elements of the offer or sale.⁷⁷ In considering this factor, it is necessary to consider, first, whether the offer is directed only to persons outside the United States. An offer would not be deemed to be outside the United States if made to a person inside the United States, for example, by a telephone call soliciting a purchase in the United States or written material offering a security being mailed or delivered to a person in the United States.⁷⁸

⁷⁶ See ALI Code, section 1905(a) (Within limits of international law, the Code applies to offers and sales that occur within the United States although initiated outside the United States); *id.* section 1905(b) (Except as provided in the antifraud section, the Code does not apply to offers and sales that occur outside the United States although initiated within the United States).

⁷⁷ Proposed Rule 901(b)(1).

⁷⁸ The concept of directing an offer into the United States, as set forth in Proposed Rule 901(b)(1)(i), is distinct from the concept of "directed selling efforts" established in Proposed Rule 901(b)(2). See *infra* n. 82 and accompanying text.

Another constituent element of an offer and sale is whether the buyer is outside the United States when the buy order is originated. This element would not only serve to locate the transaction as occurring offshore, but also would suggest that the buyer, being outside the United States, knows or should know that the transaction is beyond the protections afforded by section 5. Under these circumstances, it may be reasonable to assume that the buyer would be relying upon local law for protections of the type afforded by section 5.⁷⁹

The place of execution, payment and delivery also are proposed to be considered in determining the locus of an offer and sale. While payment into or from the United States would not necessarily indicate that a transaction is made in the United States, payment from and to a foreign location could, in combination with other indicia of a foreign transaction, lend weight to finding the transaction to be outside the United States. Delivery of securities outside the United States also would be a factor supporting a conclusion that a transaction occurred outside the United States. Comment is specifically requested on the appropriateness of including payment as an indicator of the locus of an offer or sale.

Transactions effected on or through the facilities of an established foreign securities exchange would generally be viewed as having been executed outside the United States.⁸⁰ This would not, however, be the case where the transaction is pre-arranged between the buyer and seller.⁸¹

Comment is requested on whether other factors should be enumerated in Rule 901(b)(1) as relevant in determining the locus of the offer and sale. Other facts might include the place where the principal contracts relating to the offering, such as the underwriting or subscription agreements and the fiscal

or paying agency agreements are executed; the place where the syndicate book is maintained; the place where the closing is held; the place where investors' funds are deposited by the selling group members; and the place of payment from syndicate members to the lead manager.

2. Absence of Directed Selling Efforts

The second factor to be considered under proposed Rule 901(b) is the absence of any directed selling efforts in the United States.⁸² While no single factor under proposed Rule 901 would necessarily be determinative, the presence of directed selling efforts in the United States would generally lead the Commission to find that the transaction occurred within the United States. Legitimate selling activities carried out in the United States in connection with an offering of securities registered under the Securities Act or exempt from registration pursuant to the provisions of section 3 or 4 of the Securities Act would not constitute directed selling efforts with respect to offers and sales made under Regulation S.

"Directed selling efforts" would include any activity or activities undertaken by the issuer, seller, distributor⁸³ or their affiliates or any person acting on their behalf (collectively, the "sellers") for the purpose of conditioning the market and inducing the purchase of securities.⁸⁴ Under this provision, the sellers would be restricted from making offers to sell the securities in the United States, or otherwise engaging in marketing efforts in the United States designed to induce the purchase of the securities purportedly being distributed abroad. Activities of the sellers such as mailing printed material to U.S. investors,⁸⁵

conducting promotional seminars in the United States⁸⁶ or placing advertisements with radio or television stations broadcasting into the United States or in publications with a general circulation in the United States, which discuss the offering or are otherwise intended to condition the market for the securities purportedly being offered abroad clearly would constitute a directed selling effort in the United States. The Regulation is not intended to interfere with activities conducted outside the United States, if such activities are legal and customary in the foreign jurisdiction. Such activities may relate to the foreign distribution or to the ordinary course of an issuer's business. In this regard, activities carried out abroad, such as advertising in newspapers or magazines not of general circulation in the United States or granting interviews or conducting promotional seminars outside the United States and not targeted to the United States would be permissible.⁸⁷

The proposed Regulation is likewise not intended to prohibit routine activities conducted in the United States for purposes other than inducing the purchase or sale of the securities being distributed abroad, such as product advertising and routine corporate communications.⁸⁸ The dissemination of routine information of the character and content normally published by a company, and unrelated to a selling effort of the issuer, would be permissible conduct under the proposed rule.

Similarly, the proposed rule is not intended to limit or interfere with news stories or other bona fide journalistic activities, or otherwise hinder the flow of normal corporate news regarding

⁷⁹ Proposed Rule 901(b)(2). "Directed selling efforts" is defined in proposed Rule 902(a).

⁸⁰ "Distributor" is defined in proposed Rule 902(b). See text accompanying n. 94.

⁸¹ "Directed selling efforts" as defined in proposed Rule 902 should be distinguished from unlawful solicitations in the context of broker-dealer registration under the Exchange Act. See forthcoming Release regarding registration requirements for foreign broker-dealers. Unlike general advertising, for example, certain activities that constitute a solicitation of a particular customer may not rise to the level of a "directed selling effort" under the proposed rule where such activities are isolated, or are conducted by persons other than the issuer, seller, distributor or their agents in connection with a foreign distribution. They may very well, however, constitute an offer in the United States with regard to a particular sale.

⁸² Cf. *In the Matter of First Maine Corp.*, 38 SEC 882 (1959) (Advertisements disseminated by securities firm including information regarding prospective offerings violated section 5(c) of the Securities Act) (15 U.S.C. 77e(c)); *SEC v. Commercial Investment and Development Corporation of Florida*, 373 F. Supp. 1153 (S.D. Fla.

1974) (Corporation's distribution of a newsletter to existing shareholders touting a proposed public offering violated section 5(c) of the Securities Act).

⁸³ Cf. *SEC v. The Firestone Group, Ltd.*, (1969-70 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 92,728 at 99,191 (D.D.C. 1970) (Promotional seminars conducted by an issuer that were designed to precondition the market for a contemplated public offering constituted an unlawful offer in violation of section 5(c) of the Securities Act).

⁸⁴ In *Jack B. Strauss, Jr., Esq.* (Aug. 20, 1985), the staff was unable to concur with the conclusion that public solicitation through the use of the foreign media in order to attract foreign investors while engaged in a private offering in the United States did not violate the prohibitions against general solicitation or general advertising imposed by Regulation D. Under the proposed Regulation, publicity efforts conducted entirely abroad by an issuer engaged in a foreign distribution would be permissible.

⁸⁵ Cf. Releases Nos. 33-4967 (May 28, 1964) (29 FR 7317) and 33-5009 (Oct. 7, 1969) (34 FR 16870), which address the Commission's view that section 5(c) of the Securities Act is not intended to restrict normal communications between an issuer and its stockholders.

⁷⁹ See Proposed Rule 901(b)(4) and discussion *infra*, n. 92 (justified expectations of the parties).

⁸⁰ See *infra* n. 100 and accompanying text.

⁸¹ Through trading linkages, orders placed for execution on a foreign securities exchange may, in fact, be executed on a U.S. exchange. The trading linkages that exist today (between the Montreal and Boston Stock Exchanges, and between the Toronto Stock Exchange and both the American and Midwest Stock Exchanges) are intended to provide only supplemental best execution capability in linkage stocks, and the transactions generally are executed in the market where the order is placed. For these reasons, transactions executed on a U.S. exchange by means of these trading linkages will be deemed to have been executed on a foreign securities exchange. The locus of transactions executed through trading linkages developed in the future will be determined by the nature of the linkage, the procedures used for order routing and the manner in which the linkage is used.

foreign issuers. Access by American journalists to offshore press conferences, press releases and company press spokesmen in which an offshore offering is discussed need not be limited where the information is made available to the foreign and U.S. press generally and is not specifically intended to induce purchases of securities in the United States.

3. Likelihood of Securities Coming To Rest Abroad

The third factor to be considered under the General Statement is the likelihood of the securities coming to rest outside the United States.⁸⁹ As the Commission pointed out in Release 4708, "[a]ctive trading in the United States of the securities subject to the offering during or shortly after the distribution abroad may raise a question whether a portion of the distribution was in fact being made by means of such trading." Generally, securities would be considered to have come to rest abroad if the distribution has been completed and resales into the United States are only made in routine trading transactions.

Proposed Rule 901(b)(3) sets forth the factors to consider in judging the likelihood of securities coming to rest outside the United States: The nationality of the issuer; the nature of the securities; the absence of a substantial U.S. market interest in the securities of the issuer; and the terms of the offering. An offering of securities made abroad by a foreign issuer with no U.S. market interest would suggest a greater likelihood of the securities remaining outside the United States than an offering by a U.S. issuer. The type of securities being offered also is an element in the analysis, inasmuch as equity securities are much more likely to flow back to the issuer's home country or primary market after the distribution.⁹⁰ Similarly, a trading market or other U.S. market interest implies a demand for the securities on the part of U.S. investors. Accordingly, the existence of a trading market in the United States for securities of the issuer, especially those of the same class, would increase the likelihood that the securities being sold abroad would flow back to the United States.⁹¹ The terms

upon which the transaction is made, including the use of any contractual or other restrictions on resale of the securities in the United States or to U.S. persons, including freeze periods, restrictive legends, and temporary certificates, are important considerations in the analysis.

Commentators are requested to address whether the list of factors in proposed Rule 901(b)(3) is appropriate and whether additional or alternative factors should be used. In particular, comment is requested on whether the nationality of the intermediaries, as well as the nationality of other participants in the offering, should be considered in determining the likelihood of securities coming to rest outside the United States for purposes of Rule 901(c).

4. Justified Expectations of the Parties

The final element enumerated in the proposal as important to an analysis under proposed Rule 901 is the justified expectations of the parties concerning the applicability of U.S. registration requirements.⁹² In many cases U.S. nationals may effect transactions in foreign markets without any expectation that registration provisions of the Securities Act will apply, particularly where the securities are of the same class as securities already trading in the secondary market. In these cases, investors depend upon the protections of local laws. Expectations of the investors as well as those of other parties to the transaction are relevant under this paragraph of proposed Rule 901(b). If all

parties to a transaction, expressly through choice-of-law provisions or otherwise, reasonably expect that U.S. registration provisions would not be applicable to an offshore transaction, such expectations would be a factor to consider under proposed Rule 901.

B. Safe Harbors

Proposed Rules 903-906 would set forth non-exclusive safe harbors for extraterritorial sales and resales of securities.⁹³

An offer or sale by an issuer, distributor, or an affiliate of either, that met the applicable conditions of Rules 904 and 905 would, pursuant to the provisions of proposed Rule 903, be outside the United States for the purposes of Rule 901. The term "distributor," defined in proposed Rule 902(b), includes all underwriters and dealers who are participating in a distribution of securities pursuant to contractual arrangements.⁹⁴ This definition would not necessarily encompass all purchasers of securities that would be deemed statutory underwriters under section 2(11) of the Securities Act.⁹⁵ After completion of the distribution, distributors that have disposed of their allotment would be treated as any other person under the proposed safe harbor.⁹⁶ So long as a distributor still holds some portion of its allotment, however, it would remain subject to the conditions that apply to distributors.

The second safe harbor applies to offers and sales by a persons other than an issuer, distributor, or affiliate of either. An offer or sale by such a person that met the applicable conditions would be outside the United States.

⁸⁹ Although warrants may be issued in reliance on Regulation S, such issuance may present problems. So long as the warrants are exercisable, continuous offering of the underlying securities is ongoing. To fall within the safe harbor of Regulation S, the offering could not be made in the United States or to U.S. persons, if subject to the transactional restrictions discussed *infra* n. 111 and accompanying text. At the time the warrants are exercised, a new sale takes place and either a registration statement must be in effect or an exemption must be available. Generally, the safe harbor of Regulation S would not be available for the issuance of securities on the exercise of warrants to a U.S. person. See no-action letter to *Sears Overseas Finance N.V.* (June 11, 1982).

⁹⁴ The term "dealer," as defined in section 2(12) of the Securities Act (15 U.S.C. 77b(12)) encompasses those who engage in the business of securities trading or dealing as agent, broker or principal.

⁹⁵ 15 U.S.C. 77b(11)

⁹⁶ Upon expiration of any restricted period for sales into the United States and to U.S. persons, securities (other than unsold allotments) would be viewed as unrestricted.

⁸⁹ Proposed Rule 901(b)(3).

⁹⁰ See, e.g., *Roundtable on the Internationalization of the Securities Market*, Transcript at 119 (Feb. 17, 1987) ("Roundtable"); *Report on Internationalization* at III-52 (discussing Fiat S.P.A. Euroequity offering).

⁹¹ Roundtable, at 119.

⁹² Proposed Rule 901(b)(4). See Revised Restatement section 403(2)(d) (One factor in assessing reasonableness of the exercise of jurisdiction is "the existence of justified expectations that might be protected or hurt by the regulation * * *"). See also *id.*, section 418, Comment (a) (section 418(1) addresses "situations where generally no reasonable expectations would be frustrated by the application of United States law * * *"); *id.*, Reporters' Note 2 (In situations contemplated by section 418(1)(b), "it is reasonable to impute to the person engaged in the transaction, whatever his nationality or residence, the expectation that United States law will apply"). According to the Reporters' notes, the Revised Restatement would determine whether the exercise of regulatory jurisdiction by the United States is justified to protect a U.S. resident against actions taken outside the United States, on the basis of all the circumstances. For instance, according to the Reporter, "a resident of the United States who deliberately traveled to Canada to trade in Canadian securities under looser margin rules than those applicable in the United States should not later be entitled to protection of United States law in an action against his Canadian vendor/lender." *Id.*, section 418 Reporters' Note 4, citing *Kook v. Crang*, 182 F. Supp. 398 (S.D.N.Y. 1980). See also Note, *Extraterritorial Application of United States Laws: A Conflict of Laws Approach*, 28 Stanford L. Rev. 1005, 1013-14 (1978) ("When a United States investor goes to a foreign country to deal, he has no reason to expect that the laws governing United States securities markets will travel with him").

pursuant to the provisions of proposed Rule 906.

As explained below, conducting a directed selling effort in the United States or failing to establish offering restrictions, where an applicable condition, would result in the safe harbor not being available for the entire offering. The failure to comply with other conditions would result in the safe harbor not being available for the particular offer and sale to which the failure related.

1. General Conditions

The safe harbors contain two conditions which have general application to any offer or sale made in reliance upon such safe harbors. First, such an offer or sale must be made in an "offshore transaction." Second, the safe harbors prohibit may "directed selling efforts" in the United States in connection with an offer or sale of securities in reliance on such safe harbors.

(a) *Requirement of Offshore Transaction.* An "offshore transaction" is defined in proposed Rule 902(f) as a transaction in which an offer is not made to a person in the United States, the buyer, is outside the United States at the time the buy order is originated, and both execution⁹⁷ of the transaction and delivery of the securities take place outside the United States. Alternatively, provided the related offer is not made to any person inside the United States, a transaction executed on or through the facilities of an established foreign securities exchange also would be an offshore transaction, unless pre-arranged by persons in the United States.

The safe harbors would focus on the location of the buyer for two reasons. First, the location of the buyer overseas would clearly and objectively provide evidence of the offshore nature of the transaction. Second, as noted above,⁹⁸ the buyer's location outside the United States would support the expectation that the buyer is or should be aware that the transaction is not subject to registration under the Securities Act. The requirement that the buyer himself (if a natural person), rather than his agent, be outside the United States, would avoid evidentiary difficulties and problems in administering the law, both for regulators and private parties attempting to ensure compliance with the conditions of the safe harbor. For the same reason, sales resulting from unsolicited buy orders transmitted from the United States and received by

dealers outside the United States would not be deemed "offshore" within the meaning of the safe harbor.

The offshore transaction requirement would thus impose a positive obligation on sellers and their agents to ensure (by whatever means they consider satisfactory) that the buyer is outside the United States at the time the buy order is originate, unless the transaction is executed on an established foreign securities exchange. When the buyer is a corporation or partnership, the presence abroad of the officer or partner placing the buy order would satisfy the requirement that the buyer be outside the United States.⁹⁹

Execution and delivery of the securities outside the United States have been proposed to be required as elements of an offshore transaction because they would provide evidence of the buyer's awareness of the extraterritorial nature of the transaction and also would establish the actual locus of the transaction.

A transaction executed on an established foreign securities exchange would be deemed an offshore transaction, without regard to the buyer's location or the place the securities are delivered, unless pre-arranged in the United States. Execution of such a transaction that takes place in such an organized marketplace abroad provides objective evidence of the locus of the transaction. Moreover, buyers on a foreign securities exchange presumably rely on the protections of local law and not U.S. registration requirements.

In order to be considered a sale of securities through the facilities of an established foreign securities exchange, the sale must be effected outside the United States by or through a member of, and under the auspices and supervision of, a foreign securities exchange. It is intended that a foreign securities exchange have an established history of operation, be organized under foreign law, and be regulated as an exchange by a governmental body or self-regulatory organization under an existing body of law or regulation of the jurisdiction or organization. Comment is solicited as to whether transactions executed "on or through the facilities" should encompass all transactions reported to a securities exchange.¹⁰⁰

⁹⁹ There would be no need to consider where the investment decision leading to the transaction was made.

¹⁰⁰ For example, trading on the Madrid Stock Exchange takes place during a limited time period. Trades executed between sessions are, however, reported to the exchange and included in exchange trading volume.

The Commission recognizes that, although not as well developed as in the United States, there are over-the-counter markets in other countries such as the United Kingdom and Japan. Although the text of the proposed Regulation S refers only to established foreign securities exchange, the Commission solicits comment as to whether this category of offshore transactions should be expanded to include transactions executed on or through the facilities of an "organized foreign securities market." As with a foreign securities exchange, it is contemplated that such a market have an established operating history, be organized under foreign law, and be subject to oversight by a governmental or self-regulatory body in accord with standards set by an existing body of law. Commentators are requested to address whether these markets and the regulatory structure governing them are sufficiently well developed to warrant adding non-exchange transactions in such markets to the Regulation. If so, consistent with the concept that there should be objective evidence of the locus of the transaction, should there be a requirement that the market have transaction reporting procedures?

(b) *Prohibition of Directed Selling Efforts.* Proposed Rule 904(b) prohibits any directed selling efforts in connection with any offering made pursuant to the safe harbors. The scope of the term "directed selling efforts" is discussed in connection with the General Statement,¹⁰¹ and has the same meaning in the safe harbors as it does in the General Statement.

"Directed selling efforts" implies the conditioning of the U.S. market for any of the securities purportedly being distributed abroad. A person making an offer or sale otherwise in accordance with the conditions of the applicable safe harbor would generally be unable to rely on the provisions of the safe harbor if any directed selling effort were taking place in the United States. With respect to resales on foreign exchanges pursuant to the provisions of proposed Rule 906, only a directed selling effort by the seller or any person acting on his behalf would preclude reliance on the safe harbor.

2. Conditions Relating to Specific Types of Offering by Issuers, Distributors and Their Affiliates

In addition to the general conditions, the first safe harbor prescribes specific conditions to be met in the offer or sale of securities by the issuer, a distributor,

¹⁰¹ See *supra* n. 82.

⁹⁷ See *supra* text accompanying n. 80.

⁹⁸ See *supra* text accompanying n. 79.

or an affiliate of either, such conditions depending on the nature of the securities being offered.¹⁰² Such persons are engaged in the marketing of the offer and must take steps to ensure that the securities come to rest abroad. Other sellers are subject to less elaborate precautions.¹⁰³

Proposed Rule 903 divides securities into three groups, based upon the likelihood that the securities will flow back to the United States and the degree of information available to U.S. investors regarding such securities. Each group would be subject to different restrictions. Comment is solicited as to whether the distinctions drawn between the three groups of securities are appropriate.

(a) *Securities of Non-Reporting Foreign Issuers with no Substantial U.S. Market Interest.* The securities subject to the least restrictions would be those of non-reporting foreign issuers¹⁰⁴ with no substantial U.S. market interest for any class of their securities.¹⁰⁵ Offers and sales of securities included in this category could be made in reliance on the safe harbor without any limitations or restrictions other than the general conditions specified in Rule 903, requiring that a transaction be offshore and that no directed selling efforts be made in the United States. For example, assuming compliance with the general conditions, an issuer of securities included in this category could make an offering in the Euromarkets and would not be precluded from selling securities to U.S. investors who were overseas at the time of the transaction.¹⁰⁶ Resales of such securities could be made under the same conditions.

Given the lesser probability of flowback where there is no pre-existing U.S. market interest for the securities of

a foreign issuer and no directed selling efforts in the United States, consistent with principles of comity, a foreign issuer offering securities offshore should not have to register those securities with the Commission because of some minimal, ancillary U.S. contracts. Of course, trading of a substantial amount of such securities in the United States shortly after they had been offered overseas would indicate a plan or scheme to evade the registration provisions; where a transaction is part of such a plan or scheme, registration is required.¹⁰⁷

Under the proposed safe harbor, the presence of a substantial U.S. market interest in an issuer's debt securities would preclude a foreign issuer from relying upon this portion of the safe harbor when issuing equity securities, and vice versa. Comment is solicited as to whether market interest in an issuer's equity securities should be viewed as implying market interest in its debt securities for purposes of assessing the likelihood of flowback; and, conversely, whether the existence of a market for the issuer's debt securities implies a market interest for its equity. The definition of market interest excludes debt securities exempt under Securities Act section 3(a)(3).¹⁰⁸

(b) *Securities of Reporting Issuers.* Securities of all issuers, foreign and domestic, that file reports under the Exchange Act¹⁰⁹ would be subject, under the safe harbor, both to the general conditions that an offer or sale be an offshore transaction and that there be no directed selling effort in the United States, and to specified selling restrictions. An issuer that files periodic reports with the Commission would be deemed to have a substantial U.S. market interest, which creates the potential for an indirect U.S. offering. The proposed selling restrictions are designed to protect against an indirect unregistered public offering in the United States during the period the market is most likely to be affected by selling efforts offshore. No flowback of securities should occur until after any preconditioning of the market has ceased. In the event flowback of securities in this category does occur

after the restricted period, the information relating to such securities publicly available under the Exchange Act should be sufficient to ensure investor protection.

No distinction is made in this category of securities between debt and equity securities. Under the procedures currently used to ensure that securities come to rest abroad, a period of 90 days (for debt securities) of one year (for equity securities) is imposed during which sales may not be made in the United States or to U.S. persons.¹¹⁰ Because the purpose of the offering and transactional restrictions in this category is not to prevent flowback, but to prevent securities from entering the U.S. capital markets while the market has been preconditioned for such securities, the Commission does not believe it necessary to provide different restricted periods for debt and equity securities. Comment is solicited on the appropriateness of providing for the same treatment of debt and equity offerings.

Comment is also requested as to whether the safe harbors should include a 40-day restricted period for securities of certain types of issuers such as foreign governments and large issuers with a worldwide market following. Commentators should provide the reasons for creating a differing period for the category of securities they specify. Are there currently offerings in which a 40-day restricted period is used?

Two types of selling restrictions are proposed for reporting issuers—"transactional restrictions" and "offering restrictions." In effect, offering restrictions are procedures set up by the issuer and the distributors to ensure compliance with the transactional restrictions.

Transactional restrictions would require that any offer or sale made in reliance on the safe harbor during a 90-day restricted period not be made into the United States or to a U.S. person.¹¹¹ The issuer would be required to ensure (by whatever means it reasonably considered adequate) that any non-distributor to whom it sold securities was a non-U.S. person.¹¹²

¹⁰² See *infra* n. 137.

¹⁰³ Proposed Rule 905(b)(2). "U.S. person" is defined in proposed Rule 902(i), discussed *infra*, accompanying n. 136. There is no prohibition on the offer or sale of securities to U.S. persons who are distributors; it is not the Commission's intent to prevent U.S. underwriters or broker-dealers from participating in an offshore offering.

¹⁰⁴ Distributors and their affiliates would not be prevented by the proposed Regulation from selling previously outstanding securities during an overseas distribution of securities of the same class.

¹⁰² Proposed Rule 905.

¹⁰³ See discussion of proposed Rule 906, *infra*, text accompanying n. 126.

¹⁰⁴ The definition of "foreign issuer" in proposed Rule 902(d) is essentially the same as that used in Rule 405 under the Securities Act (17 CFR 230.405).

¹⁰⁵ Proposed Rule 905(a). For a discussion of the term "substantial U.S. market interest," which is defined in proposed Rule 902(h), see *infra*, text accompanying n. 134.

¹⁰⁶ While the proposed safe harbor is intended to permit bona fide offshore offerings even where U.S. investors participate in the manner illustrated above, it is not intended to sanction transactions arranged for the purpose of evading the registration provisions of the Securities Act. Thus, for example, an agreement between an issuer, underwriters and investors pursuant to which an otherwise domestic offering is crossed on a foreign exchange or otherwise consummated abroad solely for the purpose of avoiding registration would be disqualifying for purposes of the safe harbor. Additionally, offerings specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the armed forces serving overseas, would be deemed made within the United States.

¹⁰⁷ See Preliminary Note 2 to proposed Regulation S.

¹⁰⁸ 15 U.S.C. 77c(a)(3).

¹⁰⁹ Proposed Rule 905(b). This category would not include securities of issuers submitting material with the Commission under Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) under the Exchange Act. Securities of these issuers would be included in paragraph (c) of proposed Rule 905, if they have a substantial U.S. market interest but are not listed on a U.S. securities exchange or quoted on NASDAQ, or in paragraph (a) of Rule 905, if they do not.

The 90-day period during which sales may not be made in the United States or to U.S. persons begins to run on the later of the date the closing of the offering takes place or the date the first offer of the securities to persons other than distributors is made, or in the case of continuous offerings, from certification by the lead managing underwriter that the distribution is complete.¹¹³ The term "continuous offering" would be interpreted in the same manner as in Rule 415 under the Securities Act. Comment is requested, however, whether a different interpretation should apply with respect to certain types of non-traditional offerings, such as medium-term note programs. Comment is also requested as to whether it is reasonable and not unduly burdensome to begin the restricted period at the completion of the distribution for continuous offerings. If this is believed to be unreasonable, commentators should indicate when the restricted period should commence taking into account the purpose of the restrictions, i.e., to protect against U.S. sales while the market conditioned by the selling effort.

The restricted period is not begun anew upon resale of the securities; the restrictions continue to apply only for the remainder, if any, of the applicable period. Similarly, in the case of convertible securities, the underlying securities issued on conversion would be restricted for the remainder of the applicable restricted period that applied to the convertible securities.¹¹⁴

Under the proposed safe harbor, the deposit of securities into an American Depositary Receipt ("ADR") or similar facility would be deemed a sale in the United States, and the securities offered or sold in reliance upon the safe harbor could not be placed in such facility for 90 days. The deposit side of the ADR facility would be required to close down for that period. Comment is requested

on whether, if an ADR facility could establish that securities placed with it were not subject to the restriction on sale in the United States or to U.S. persons (for example, if the securities offered in reliance upon the safe harbor bore a distinguishing legend), the facility should be able to continue to accept deposits of securities of the same class as those offered in reliance upon the safe harbor, provided the depositor represented and could establish that the securities being deposited had not been borrowed, and were not being replaced with new shares acquired in the overseas offering.

"Offering restrictions" are procedures that must be adopted with regard to the entire offering for any offer or sale by the issuer, distributors, or their affiliates to be in compliance with the safe harbor. The purpose of offering restrictions is to ensure compliance with the prohibition on offer or sale of the securities in the United States or to U.S. persons during the 90-day restricted period. The general principal of the safe harbor provisions is that each offer or sale purportedly made pursuant to a safe harbor should be examined separately and that a particular non-complying offer or sale would not, in itself, result in any other offer or sale not meeting the conditions of the Regulation. However, when the issuer, a distributor, or an affiliate of either is the seller of securities, that person is in a position to ensure, and should ensure, that procedures designed to discourage flowback are used with respect to the entire offering. On the other hand, if adequate offering restrictions are adopted, the fact that one distributor makes an offer or sale without following the "transactional restrictions" would not affect other offers or sales by that or any other distributor.

As proposed, the offering restrictions for this category of securities have been modified from those developed in no-action letters under Release 4708. The proposed offering restrictions would require that distributors in privity of contract with the issuer, seller, or any managing underwriter, contract that all their offers and sales of the securities will be made in accordance with the proposed safe harbor (or pursuant to registration under the Securities Act or an exemption therefrom).¹¹⁵ The proposed safe harbor would require that each distributor or dealer purchasing securities from a distributor would receive a confirmation or other notice, acceptance of which would bind him to the same restrictions that apply to a

distributor in privity of contract with the issuer, seller, or any managing underwriter.¹¹⁶

The issuer and distributors also must ensure that all offering materials or advertisements relating to the offering disclose the restrictions on offers or sales in the United States or to U.S. persons.¹¹⁷ Retail investors purchasing the securities would be advised that the securities may not be sold in the United States or to U.S. persons by disclosure of the applicable restrictions in the prospectuses or offering circulars, if any, used in connection with the distribution. Disclosure of the restrictions is also required to appear in all advertisements or press releases relating to the securities.

Given the public availability in the United States of information concerning reporting issuers, and the restrictions placed on resales,¹¹⁸ certain procedures that commonly have been used to ensure that securities come to rest abroad have not been proposed to be required to be used in offerings of their securities. Most notably, although restrictions on offerings in the United States or to U.S. persons would remain, "lock-up" procedures are not proposed to be required for securities in this category, nor would any certificates representing the securities offered be required to bear restrictive legends. The use of a temporary global certificate for debt securities, exchangeable for definitive securities at the end of the restricted period upon certification of non-U.S. beneficial ownership, would thus not be required, although it is a procedure used in most debt offerings described to the Commission in recent no-action requests.¹¹⁹ Nor would the specific procedures to restrict transfer currently applied to equity securities be required for this category of securities. These include contractual agreements by the purchasers of the securities that they will resell securities in accordance with the registration requirements of the Act or an exemption therefrom, and certificates by such purchasers as to their status as non-U.S. persons.

The Commission understands that most, if not all, offshore offerings by reporting U.S. issuers, contemporaneous offerings are made in the United States and all shares are registered. In the case of foreign issuers with contemporaneous

¹¹⁶ Proposed Rule 902(e)(2).

¹¹⁷ Proposed Rule 902(e)(3).

¹¹⁸ See *infra* n. 111.

¹¹⁹ See no-action letters cited *supra*, n. 9. Procedures currently required to be used for tax law purposes would not be affected by the proposed Regulation.

¹¹⁵ Proposed Rules 902(e)(1); 905(b)(1).

In the United States or to U.S. persons, provided they did not know that the previously outstanding securities had been borrowed or were being replaced with the new shares acquired in the offering.

¹¹³ Upon expiration of the restricted period, securities sold in reliance on the safe harbor will be viewed as unrestricted. Distributors still holding an unsold allotment subsequent to such date will, however, continue to be prohibited from offering or selling such securities in the United States or to U.S. persons, absent registration under the Securities Act or an available exemption.

¹¹⁴ In most cases, conversion would be exempt from registration under section 3(a)(9) of the Securities Act (15 U.S.C. 77c(a)(9)) except where compensation is paid on conversion. Where such an exemption is not available, the same analysis as applies to the exercise of warrants under Regulations S would apply to conversion. See *supra*, n. 93.

U.S. and offshore offerings, flowback registration is undertaken for some part of the offshore offering. The Commission requests comment on whether the safe harbor provisions of proposed Rule 906 for resales on an established exchange are likely to displace the current practices of registering the securities as outlined above.

Commentators are requested to address the adequacy of the proposed procedural restrictions to ensure that sales will not be made in the United States or to U.S. persons during the 90-day restricted period, particularly where in the case of equity securities the current practice of registration may be displaced by reliance on proposed Rule 906. Comment is specifically requested on whether other steps, such as legending the certificates (if any) representing the securities to describe these restrictions, would be appropriate. Comment is specifically requested on the appropriateness of the 90-day period during which sales may not be made in the United States or to U.S. persons.

(c) *Securities of all other issuers.* All securities not covered by the prior two provisions fall into a residual category, which is subject to procedures intended to protect against an unregistered U.S. distribution where there is little if any information available to the marketplace about the issuer and its securities and there is a likelihood of flowback. This category would include securities of non-reporting domestic issuers and those of non-reporting foreign issuers¹²⁰ that have a substantial U.S. market interest with respect to any class of their securities. Among these issuers would be those foreign issuers traded on NASDAQ and subject to the grandfather provision of Rule 12g3-2(d)(3) of the Exchange Act,¹²¹ and those non-reporting foreign issuers whose securities trade in sponsored ADRs. Comment is requested on whether the latter group appropriately is included in this category.

As in the case of securities of reporting issuers, offerings of securities in this category would be subject to the general conditions of proposed Rule 904 and certain specific selling restrictions. Offering restrictions would be required to be adopted for offerings of these securities, as they would for offerings of securities of reporting issuers. In contrast to securities of a reporting

issuer, however, traditional transactional restrictions to prevent flowback have been retained.

The restrictive procedures proposed are those warranted in view of the likelihood of flowback of the securities in this category and investor protection concerns raised by the lack of public information in the U.S. markets concerning the issuer. Securities of non-reporting U.S. issuers can be expected to flow back to the market where principal business and employees are located; in the case of non-reporting foreign issuers with a substantial U.S. market interest, particularly if the existing interest is in equity securities of the same class, flowback is likely. In the case of non-reporting issuers, this tendency toward flowback is troublesome because information available in the marketplace may be insufficient to ensure investor protection. Additionally, these issuers, particularly U.S. issuers, may be more likely than reporting issuers to make an offshore offering simply to avoid registration under the Securities Act, given the increased costs and consequences of registration.

The proposed rule equates the flowback potential of securities of non-reporting U.S. issuers and securities of foreign issuers with a substantial U.S. market interest. However, the Commission recognizes that where the foreign issuer's equity securities are actively traded outside the United States, the potential for flowback of securities at least of that class may be substantially diminished. The Commission therefore requests that commentators address whether it is appropriate to equate the need for protection against a U.S. distribution in the case of a non-reporting U.S. issuer and a non-reporting foreign issuer with a substantial U.S. market. Should equity securities of a foreign issuer with its primary active market outside the United States be treated like securities of a reporting issuer? If so, how should the primary market for a security be determined?

In essence, the restrictive procedures proposed are those that have evolved under the no-action letters under Release 4708. These distinguish between debt¹²² and equity, recognizing that

debt is generally sold in institutional markets and that the likelihood of flowback is more limited. Comment is requested as to whether this distinction is appropriate, and if not, whether other distinctions among types of securities would be appropriate.

The transactional restrictions that would be applicable to debt securities in this category would reinforce the requirement that no offer or sale of such securities be made in the United States or to U.S. persons (other than distributors) for 90 days, through use of a temporary global security. Ninety days after the later of the closing of the offering or the first offer of the securities to persons other than distributors in reliance upon the Regulation,¹²³ the temporary global security could be exchanged for definitive securities, if holders of the securities certified that the securities were not beneficially owned by U.S. persons.

Offerings of equity securities in this category would be subject to restriction similar to those afforded no-action treatment in *InfraRed Associates, Inc.*¹²⁴ For one year after the later of the closing of the offering or the first offer of the securities to persons other than distributors in reliance upon the Regulation,¹²⁵ the securities could not be sold in the United States or to U.S. persons (other than distributors). Purchasers of the securities who were not distributors would be required to certify that they were not U.S. persons. Purchasers would also be required to agree not to sell the securities in the United States or to U.S. persons (other than distributors), except in accordance with the registration provisions of the Securities Act or an exemption therefrom, or in accordance with the provisions of the proposed Regulation. Purchasers would also agree to impose these restrictions on subsequent purchasers.

The proposed safe harbor would further require that the issuer, by contract or a provision in its bylaws, articles, charter or comparable document, refuse to register any transfer of equity securities not made in accordance with the provisions of the proposed Regulation. How to establish whether such transfers were made in accordance with the Regulation is a matter for the issuer to determine; however, an issuer receiving a request for a transfer to a person with a U.S.

¹²⁰ Foreign issuers filing pursuant to Rule 12g3-2(b) are not deemed reporting issuers and would fall into this category if they have a substantial U.S. market interest; otherwise they would be within proposed Rule 905(a).

¹²¹ 17 CFR 240.12g3-2(d)(3).

¹²² Debt securities convertible into equity are treated as equity securities. *Sperry Rand Corporation* (Mar. 1, 1974); cf. Rule 405 (17 CFR 230.405). The only circumstance in which convertible securities will be treated as debt rather than equity securities would be where, by their terms, the securities would not be convertible into equity until the expiration of the restricted period, if any, applicable to the equity securities of the issuer.

¹²³ In a continuous offering the 90-day period would commence upon completion of the distribution. Proposed Rule 905(c)(2).

¹²⁴ *Supra*, n. 11.

¹²⁵ See *supra* n. 123.

address would be on notice as to possible non-compliance with the proposed Regulation and should seek further information regarding the circumstances of the transfer.

Comment is requested on the appropriateness of the procedures used to ensure that securities in this category come to rest overseas.

3. Resales

Sales and resales by issuers, distributors, and their affiliates in reliance on the safe harbor provided by the Regulation would always be subject to the provisions of proposed Rules 904 and 905. Persons other than issuers, distributors (or the affiliates of either) ("investors") would be given more flexibility in the resale of securities. With one partial exception, noted below, sales by investors would be subject to the general conditions set forth in proposed Rule 904. Investors could resell securities in reliance upon the proposed safe harbor in either of two ways.¹²⁶

Securities could be offered or sold subject to the same conditions as would apply to an offer or sale of that category of securities by the issuer, with two exceptions. First, while such a resale would be required to be made in an offshore transaction with no directed selling efforts in the United States, no offering restrictions would be necessary. Second, in order to ensure compliance with the restrictions on resales in the United States or to U.S. persons for the remainder of the restricted period, Rule 906 would include, as an additional condition, the requirement that purchasers must be notified of the transactional restrictions. Acceptance of the notification would bind the purchaser to comply with those transactional restrictions.¹²⁷ Comment is solicited on whether it would be preferable to eliminate the notification condition in sales by non-securities professionals if traditional procedures, such as lock-ups and legending, were required for offerings of securities of reporting issuers.

The second method which investors could use to resell securities under the safe harbor, other than those of non-reporting U.S. issuers and non-reporting foreign issuers with a substantial U.S. market interest, would be resale on or through the facilities of an established foreign securities exchange.¹²⁸ Resales

would be permitted to be made on foreign exchanges under the safe harbor because it can be assumed that persons purchasing securities, even securities of U.S. issuers, on a foreign securities exchange will rely on the protection of the local securities law and are unlikely to expect that the registration provisions of U.S. securities law apply.¹²⁹

The exchange transaction option would be limited, in the case of reporting issuers' securities, to those cases where the seller did not know that any counter-party was a U.S. person. No duty of inquiry is intended in connection with the resale rule as to whether the counter-party is a U.S. person; the rule is intended to preclude transactions with U.S. persons from being prearranged and executed on a foreign exchange in order to attempt to take advantage of Rule 906. The seller in a foreign exchange transaction or any person acting for him may not make any directed selling effort in the United States, but, in contrast to the offering-wide prohibition on directed selling efforts applicable to initial sales or other resales, a directed selling effort by any other person would not affect the seller's ability to rely on the safe harbor for exchange transactions.

Comment is solicited on whether the securities of non-reporting foreign issuers with a substantial U.S. market interest should be permitted to be resold on a foreign exchange in reliance on the proposed safe harbor, if the primary market for the securities is outside the United States, on the grounds that such securities are equally or more likely to flow back to that market than to the U.S. markets. If so, how should the "primary market" for a security be determined?

The scope of proposed Rule 906 is not limited to the resale of securities acquired in an offshore transaction. The proposed Rule would also apply, for example, to the resale of securities acquired in a private placement in the United States.¹³⁰ In cases where the securities to be resold were not acquired in an offshore transaction made pursuant to the Regulation, the period, if any, during which offers or sales may not be made in the United States or to U.S. persons, would commence on the date upon which such investor's securities were first sold in reliance on the Regulation.¹³¹ This resale provision

is likely to prove most useful to persons deemed statutory underwriters under section 2(11) of the Securities Act¹³² who wish to resell securities under a safe harbor provision before the expiration of the holding period established by the safe harbor provided in Rule 144 under the Securities Act.¹³³ Persons selling such restricted securities could, of course, resell on a foreign securities exchange pursuant to proposed Rule 906 without regard to any period during which sales into the United States or to U.S. persons is restricted. Comments are requested generally on the application of the safe harbor provisions to the resale of securities acquired in transactions other than overseas offerings, and specifically on the provision that in such cases the period during which sale into the United States or to U.S. persons other than on a foreign exchange is prohibited will commence on the date the securities are first sold in reliance on Regulation S.

C. Certain Definitions

Proposed Rule 902 contains definitions of terms used throughout the Regulation. In addition to those terms previously discussed, the following definitions should be noted.

1. Substantial U.S. Market Interest¹³⁴

In order to determine the manner in which securities of a foreign issuer may be offered and sold under the proposed safe harbor, it would be necessary in certain cases to establish whether there was a substantial U.S. market interest for the issuer's securities.¹³⁵ The existence of a substantial U.S. market interest is one indicator of the likelihood of the securities flowing back to the United States.

Under the proposal, a substantial U.S. market interest in an issuer's equity securities would be deemed to exist unless each of three factors could be established. First, it would be necessary that none of the issuer's securities be listed on a national securities exchange or quoted on NASDAQ. The listing or quotation of securities on an organized market in this country would be deemed conclusive evidence that there is a substantial interest in the issuer's securities in this country and of the issuer's intention to promote a market in its securities in this country. Second, the average monthly trading volume of the

¹²⁶ See *supra* n. 79.

¹²⁷ See *supra* n. 19.

¹²⁸ Thus, for example, securities of a reporting issuer purchased in a private placement on August 1, 1988, could be resold in a transaction meeting the conditions of the safe harbor on, for example, September 1, 1988, and restrictions on resale in the United States or to U.S. persons would remain in

place until November 29, 1988 unless such securities were resold on a foreign securities exchange.

¹³² 15 U.S.C. 77b(11).

¹³³ 17 CFR 230.144.

¹³⁴ Proposed Rule 902(h).

¹³⁵ See text accompanying n. 105, *supra*.

¹²⁹ Proposed Rule 906.

¹²⁷ Compare proposed Rule 902(e)(2).

¹²⁸ As discussed above (*supra* text accompanying n. 100), the Commission is considering expanding the permissible transactions to include those on an organized foreign securities market.

issuer's equity securities in the United States would be required to be less than 100,000 shares. Comment is requested regarding the practicability of ascertaining volume information for issuers whose securities are not listed on a national securities exchange or quoted on NASDAQ. Comment is further requested as to whether a test unrelated to volume would be more appropriate. Finally, none of the issuer's securities could be subject to a sponsored American depositary receipt or similar facility. Issuers with sponsored ADR facilities may be presumed to have made a conscious decision to enter the U.S. securities markets, and to have an interest in promoting the trading of their securities in such markets.

A substantial U.S. market interest would be deemed to exist with regard to an issuer's debt securities, unless none of the issuer's debt securities were listed on a national securities exchange, and the aggregate principal amount of outstanding debt securities held in the United States (determined by reference to the address of the record holder as it appears in the records of the issuer or its transfer agent) was less than \$100 million. Given the nature of trading in debt securities, the amount of debt securities held in this country would be used as an indication of the extent of interest in the securities in the United States. While a sounder test of substantial U.S. market interest in debt securities might be based on a combination of the number of holders and aggregate principal amount of such securities, the Commission understands that ascertaining the number of U.S. holders of debt may not be practical. Comment is solicited on whether there is a practicable means by which investor interest in debt securities could be measured. If not, should a test based on dollar amount have as an alternative, a higher dollar figure such as \$500 million coupled with a showing that the debt securities are not beneficially owned by more than a limited number (for example, between 10 and 25) of U.S. persons? Comment is also requested on the threshold of the \$100 million test; should it be higher (for example, \$500 million) or lower (for example, \$25-50 million) and why?

2. U.S. Person ¹³⁶

The proposed rule contains a definition of the term "U.S. person." Previous no-action letters have assumed that citizenship was a principal factor in the test of a natural person's status as a

U.S. person for purposes of Release 4708.¹³⁷ For purposes of the Regulation, however, "U.S. person" would mean any natural person resident in the United States. A U.S. citizen resident in France, for example, would not be treated as a U.S. person for purposes of the proposed Regulation. Conversely, a French citizen resident in the United States would be treated as a U.S. person.¹³⁸

With respect to forms of business organization, such as corporations and partnerships, the proposed definition would codify and elaborate on the positions set forth in no-action letters. With regard to such entities, the place of incorporation or organization would generally control.¹³⁹ A corporation incorporated under the laws of France, for example, would not be a U.S. person even though it had an active operation in the United States. The status of subsidiaries and affiliated companies which have separate legal identities would generally be determined according to the place of incorporation or organization. As proposed, there is an exception to the general position, which would apply to foreign entities formed by U.S. persons principally for the purpose of investing in unregistered securities. The Commission contemplates that, on adoption, it may modify or eliminate that exception, because institutional investors should be able to choose to invest abroad through foreign affiliated entities. Commentators are requested to address whether elimination of this exception is desirable and whether there is any reason to modify the present position in any other respect.

In accord with the current position, a branch or agency of a foreign entity is treated as a U.S. person if it is located in the United States. On the other hand, agencies and branches of U.S. banks and insurance companies located outside the United States are not treated as U.S. persons, if they operate for valid business reasons as locally regulated entities engaged in the banking or insurance business and not principally for the purpose of investing in securities not registered under the Securities Act.¹⁴⁰ The Commission is considering

changing current practice to extend treatment as a non-U.S. person to branches and agencies outside the specified industries, and comment is requested on that potential modification. The Commission is also considering, and solicits comment on, treating even branches and agencies operated principally for investment purposes as non-U.S. persons.

With respect to trusts and other fiduciary accounts, the proposed definition would treat the entity or person with the fiduciary obligation to invest as the buyer; therefore the status of that person would govern. Thus, where a U.S. person has discretion to make investment decisions for the account of a non-U.S. person, the account is treated as a U.S. person. Conversely, where a non-U.S. person makes investment decisions for the account of a U.S. person, that account will not be treated as a U.S. person.

In so providing, the proposed definition would overturn a position previously expressed by the staff in a no-action letter to the effect that a U.S. broker-dealer with discretion to act for a non-U.S. person would be a non-U.S. person when acting in that capacity.¹⁴¹ That letter was issued in the context of finding that section 5 protected all U.S. persons wherever located, and did not protect foreign persons even where buying in the U.S. market. The position reflected in the letter is inconsistent with the principles underlying the proposed Regulation. While there are legitimate concerns regarding the competitiveness abroad of U.S. fiduciaries, these would be addressed by anticipated Commission rulemaking to provide a safe harbor exemption from the registration requirements for certain institutional resales. In addition, as noted above, the Commission is considering modifying the definition of U.S. person so that foreign entities formed by such U.S. fiduciaries for the purpose of investing in unregistered securities would not be included. That contemplated modification would address the competitive question. Nonetheless, the Commission requests specific comment on whether, alternatively, the definition of U.S. person should be revised to reiterate the *Baer Securities* position and, if so, how that could be articulated under the principles of Regulation S. Comment is also requested on the implications such a revision would have for fiduciaries

¹³⁷ E.g., *Executive Management, Inc.* (Oct. 28, 1983).

¹³⁸ While transient visitors not resident in the United States are not U.S. persons, offers and sales to transients in the United States would be viewed as transactions in the United States and could not be part of an offering relying on the safe harbors of Regulation S. Cf. forthcoming Release regarding registration requirements for foreign broker-dealers.

¹³⁹ See, e.g., *Goldman, Sachs & Co.* (Oct. 3, 1985).

¹⁴⁰ See *Foreign Agencies and Branches of United States Banks and Insurance Companies* (Feb. 25, 1988).

¹⁴¹ *Baer Securities Corporation* (Oct. 12, 1979). The staff's no-action position in *Baer Securities* is not being withdrawn pending adoption of the Regulation.

¹³⁶ Proposed Rule 902(i).

holding for U.S. persons, and other entities such as agencies and branches that are actually acting for U.S. persons.

Comment is further requested generally on the effect of the proposed safe harbor where U.S. fiduciaries are not making investment decisions in the United States. Where one of several fiduciaries (for example, where an estate has several co-executors) is located in the United States but the non-U.S. fiduciaries, without the participation of the U.S. fiduciary, purchase securities, should the existence of a U.S. fiduciary be disregarded? As proposed, the existence of the U.S. fiduciary would cause the trust or account to be a U.S. person.

D. Interaction With Trust Indenture Act

The Trust Indenture Act of 1939 ("Trust Indenture Act")¹⁴² applies generally to the offer and sale of debt securities and certain other securities if the means or instruments of interstate commerce or the mails are used. In such cases, the securities must be issued under an indenture which conforms to the requirements of and has been qualified under the Trust Indenture Act, unless an exemption is available.¹⁴³

In the past, the Commission has not sought to apply the Trust Indenture Act to the full extent of the statute's jurisdictional reach. The staff has granted numerous no-action letters involving offers and sales of securities otherwise than under a qualified indenture, where the securities involved were being offered and sold in reliance upon Release 4708.¹⁴⁴

The Commission intends to continue this position with respect to offers and sales of securities made under the safe harbor provisions of Rules 903 and 906, if Regulation S is adopted. Specifically, the Commission would not take any enforcement action under the Trust Indenture Act where an offer and sale of securities is made otherwise than under a qualified indenture, if the offer and sale are made in compliance with Rule 903 or 906. Nor would the Commission take any enforcement action under the Trust Indenture Act with respect to an offer and sale of securities meeting the requirements of the General Statement,

if proposed Regulation S is adopted. However, the staff will not issue no-action letters as to whether, for purposes of the Trust Indenture Act, a transaction falls within the provisions of the General Statement or the safe harbors of Regulation S.¹⁴⁵

IV. Request for Comments

Any interested persons wanting to submit written comments on proposed Regulation S, as well as other matters that might have an impact on the proposal, are requested to do so.

V. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with proposed Regulation S, the Commission requests commentators to provide views and data as to the costs and benefits associated with the Regulation intended to clarify the extraterritorial application of the registration provisions of the Securities Act. There may be some additional costs to issuers, distributors or other sellers associated with structuring a transaction to comply with the requirements of the safe harbor, or to correspond with the considerations enumerated in the General Statement. Nevertheless, such costs may be outweighed by the assurance that registration is not required and that the costs of registration need not be undertaken. The streamlining of currently imposed restrictions designed to assure that securities come to rest outside the United States also would reduce costs.

VI. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 has been prepared concerning the proposed Regulation. The analysis notes that the proposed Regulation is intended to clarify the extraterritorial application of the registration provisions of the Securities Act.

The proposed Regulation will not result in any significant increase in reporting, recordkeeping or compliance requirements. No alternatives to the proposed Regulation consistent with its objectives were found. Small entities, like any other issuers, are entitled to the benefits of the guidance provided by the General Statement and the safe harbor.

¹⁴² On November 30, 1987, the Commission submitted a proposal to Congress which, if enacted, would comprehensively modernize the Trust Indenture Act. Under the proposal, the Commission's exemptive power under section 304(d) would be broadened to permit adjustment of the Act's requirements to particular needs when their application would impose undue restrictions.

A copy of the analysis may be obtained by contacting Sara Hanks, Office of Chief Counsel, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VII. Statutory Basis and Text of Rule Proposals

This regulation is being proposed pursuant to sections 2, 4, and 19 of the Securities Act of 1933.¹⁴⁶

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Registration requirements.

Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 815, as amended, 15 U.S.C. 77s * * * Sections 230.901-230.906 also issued under secs. 2, 15 U.S.C. 77b, and 4, 15 U.S.C. 77d.

2. By adding new Regulation S consisting of Preliminary Notes and §§ 230.901-230.906, to read as follows:

Regulation S—Rules Governing Offers and Sales Made Outside The United States Without Registration Under The Securities Act of 1933

Sec.	
230.901	General statement.
230.902	Definitions.
230.903	Offers and sales deemed outside the United States.
230.904	General conditions to be met.
230.905	Offers or sales by the issuer, affiliates of the issuer, distributors, and affiliates of distributors: Conditions relating to specific securities.
230.906	Resales.

Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under The Securities Act of 1933

Preliminary Notes

1. The following rules relate solely to the application of section 5 of the Securities Act of 1933 (the "Act") (15 U.S.C. 77e) and not to antifraud or other provisions of the Federal securities laws.

¹⁴⁶ 15 U.S.C. 77b, 77d and 77s.

¹⁴² 15 U.S.C. 77aaa-1bbb.

¹⁴³ Section 304(a)(6) of the Trust Indenture Act (15 U.S.C. 77ddd(a)(6)) contains an exemption for certain securities issued or guaranteed by a foreign government and certain subdivisions and instrumentalities thereof. Section 304(d) (15 U.S.C. 77ddd(d)), authorizes the Commission, on application by an issuer and after opportunity for a hearing, to exempt by order any security of a person organized under the laws of a foreign government or political subdivision thereof, if certain conditions are met.

¹⁴⁴ E.g. Goldman, Sachs & Co. (Oct. 3, 1985).

2. In view of the objective of these rules and the policies underlying the Act, Regulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

3. Nothing in these rules obviates the need to comply with any applicable State law relating to the offer and sale of securities.

4. Attempted compliance with any rule in Regulation S does not act as an exclusive election; a person making an offer or sale of securities can also claim the availability of any applicable exemption.

§ 230.901 General statement.

(a) For the purposes only of section 5 of the Act (15 U.S.C. 77e), the terms "offer," "offer to sell," "offer for sale," "sale," and "offer to buy" shall be deemed to include offers and sales that occur within the United States and shall be deemed not to include offers and sales that occur outside the United States.

(b) In determining whether an offer or sale occurs outside the United States, relevant considerations are:

(1) The locus of the constituent elements of the offer or sale, considering factors such as:

(i) Whether the offer is directed only to persons outside the United States;

(ii) Whether the buyer is outside the United States at the time they buy order is originated;

(iii) Whether execution, payment and delivery take place outside the United States; and

(iv) Whether the sale is executed on or through the facilities of an established foreign securities exchange;

(2) The absence of any directed selling efforts in the United States;

(3) The likelihood of the securities coming to rest outside the United States, considering:

(i) The nationality of the issuer;

(ii) The extent of the issuer's business presence in the United States;

(iii) The type of securities being offered or sold;

(iv) The absence of a substantial U.S. market interest for securities of the issuer; and

(v) The terms of the transaction, including the use of any contractual or other restrictions on resale of the securities into the United States and to U.S. persons; and

(4) The justified expectations of the parties to the transaction concerning the applicability of the registration provisions of the Act.

(c) The provisions of this Regulation S shall not apply to offers and sales of securities issued by investment companies registered or required to be registered under the Investment

Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

§ 230.902 Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Directed Selling Efforts.* The term "directed selling efforts" means any activity, such as contracts with investors by telephone, written communication or investor meetings, for the purpose of inducing the purchase or sale of any of the securities being offered or sold in an offering made in reliance on this Regulation S.

(b) *Distributor.* "Distributor" means any underwriter, prospective underwriter, dealer, or other person who is participating, pursuant to a contractual arrangement, in the distribution of the securities sold in reliance on this Regulation S.

(c) *Domestic Issuer.* "Domestic issuer" means any issuer other than a foreign issuer.

(d) *Foreign Issuer.* "Foreign issuer" means any issuer that is: (1) The government of any foreign country or of any political subdivision of a foreign country; (2) a national of any foreign jurisdiction; or (3) a corporation or other organization incorporated or organized under the laws of any foreign jurisdiction; *Provided, however,* that such issuer shall not be deemed a foreign issuer if: (i) More than 50 percent of the outstanding voting securities of such issuer is held of record, either directly or through voting trust certificates or depository receipts, by persons for whom a U.S. address appears on the records of the issuer, its transfer agent, voting trustee or depository; and (ii) any of the following factors are present: (A) The majority of the executive officers or directors of the issuer are U.S. citizens or residents; (B) more than 50 percent of the assets of the issuer are located in the United States; or (C) the business of the issuer is administered principally in the United States.

(e) *Offering Restrictions.* "Offering restrictions" means:

(1) Each distributor in privity of contract with the issuer, seller, or any managing underwriter agrees in writing that all offers and sales of the securities being sold in reliance on § 230.903 shall be made in accordance with the provisions of § 230.903 or pursuant to registration under the Act or an exemption therefrom;

(2) Each distributor or dealer purchasing securities from another distributor receives a confirmation or other notice, the acceptance of which binds him to the same restrictions on offers and sales that apply to a

distributor in privity of contract with the issuer, seller, or any managing underwriter; and

(3) Any offering materials and documents used in connection with offers and sales made in reliance on § 230.903 shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons within the period specified in § 230.905 (b) or (c), as applicable, unless: (i) The securities are registered under the Act; (ii) an exemption from the registration requirements of the Act is available; or (iii) the securities are sold in accordance with the provisions of this Regulation S. Such statements shall appear:

(A) On the cover or in side cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(B) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(C) In any press release or advertisement made or issued by the issuer, any distributor or any person acting on behalf of any of them.

(f) *Offshore Transaction.* An offer or sale of securities is an "offshore transaction" if:

(1) The offer is not made to a person in the United States; and

(2) Either: (i) The buyer is outside the United States at the time the buy is originated, and execution and delivery take place outside the United States; or (ii) the transaction, not pre-arranged by persons in the United States, is executed on or through the facilities of an established foreign securities exchange.

(g) *Reporting Issuer.* "Reporting issuer" means an issuer that (1) has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78b(b) or 78b(g)) or is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)), and (2) has filed all the material required to be filed pursuant to sections 13(a) and 15(d) (15 U.S.C. 78m(a) and 78o(d)) for a period of at least twelve months immediately preceding the offer and sale of securities made in reliance upon this Regulation S (or for such shorter period that the issuer was required to file such material).

(h) *Substantial U.S. Market Interest.* (1) An issuer has a "substantial U.S. market interest" with respect to its equity securities unless it can be established that:

(i) None of the issuer's securities, or depository shares or similar securities

representing the issuer's securities, is listed on a national securities exchange or quoted in an automated inter-dealer quotation system in the United States;

(ii) The average monthly trading volume of the issuer's equity securities in the United States, including securities represented by depositary shares or similar securities, is less than the greater of 100,000 shares or five percent of the total worldwide monthly trading volume of such securities; and

(iii) None of the issuer's securities is subject to a sponsored American depositary receipt or similar facility.

(2) An issuer has a "substantial U.S. market interest" with respect to its debt securities unless it can be established that:

(i) None of the issuer's debt securities is listed on a national securities exchange; and

(ii) The aggregate principal amount of outstanding debt securities held of record by persons for whom a U.S. address appears in the records of the issuer, its transfer agent or depositary is less than \$100 million.

(3) An issuer does not have a substantial U.S. market interest if the only securities of the issuer that would otherwise result in such a determination are securities that qualify for the exemption provided by section 3(a)(3) of the Act (15 U.S.C. 77c(a)(3)).

(i) *U.S. Person.* (1) "U.S. person" means any natural person resident in the United States; any partnership or corporation organized or incorporated under the laws of the United States, its territories or possessions or any state or the District of Columbia; any partnership or corporation organized or incorporated under the laws of any foreign jurisdiction, if the partnership or corporation is formed by a U.S. person principally for the purpose of investing in securities not registered under the Act; any estate of which any executor or administrator is a U.S. person; any trust of which any trustee is a U.S. person; any agency or branch of a foreign entity located in the United States; any non-discretionary custodial account or similar account held by a dealer or other fiduciary for the account of a U.S. person; and any discretionary custodial account or similar account held by a dealer or other fiduciary located in the United States, regardless of whether the beneficial owner of such account is a U.S. person.

(2) Notwithstanding paragraph (i)(1) of this section, any agency or branch of a U.S. person located outside the United States shall not be deemed a "U.S. person" if:

(i) The agency or branch operates for valid business reasons and not

principally for the purpose of investing in securities not registered under the Act; and

(ii) The agency or branch is engaged in the business of banking or insurance and is subject to substantive banking or insurance regulation, as the case may be, in the jurisdiction where located.

(3) The following entities are not "U.S. persons" for purposes of this rule: The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank and the United Nations and its agencies and affiliates.

§ 230.903 Offers and sales deemed outside the United States.

An offer, offer to sell, offer for sale, sale or offer to buy that satisfies the applicable conditions of §§ 230.904 through 230.906 shall be deemed to occur outside the United States within the meaning of § 230.901.

§ 230.904 General conditions to be met.

Except as specified in § 230.906(b), the following conditions shall be applicable to any offer or sale made in reliance on § 230.903.

(a) *Requirement of Offshore Transaction.* The offer or sale shall be made in an offshore transaction.

(b) *Prohibition Against Directed Selling Efforts.* No directed selling efforts in connection with the offering shall be made in the United States by the issuer, an affiliate of the issuer, a distributor, an affiliate of a distributor, or any person acting on their behalf.

§ 230.905 Offers or sales by the issuer, affiliates of the issuer, distributors, and affiliates of distributors: Conditions relating to specific securities.

Any offer or sale of securities by the issuer, an affiliate of the issuer, a distributor or an affiliate of a distributor shall be made in accordance with the following requirements in addition to those set forth in § 230.904:

(a) *Securities of Certain Foreign Issuers.* An offer or sale of securities of a non-reporting foreign issuer that has no substantial U.S. market interest for any class of its securities may be made in reliance on § 230.903 with no restrictions other than those set forth in § 230.904.

(b) *Securities of Reporting Issuers.* An offer or sale of securities of a domestic or foreign reporting issuer may be made in reliance upon § 230.903 provided that:

(1) Offering restrictions are adopted; and

(2) The offer or sale, if made prior to the expiration of 90 days from the later of the date upon which the securities

were first offered to persons other than distributors in reliance upon this Regulation S or the closing of the offering, or if made by a distributor holding an unsold allotment or subscription, is not made in the United States or to a U.S. person (other than a distributor); *Provided, however,* that in a continuous offering the 90-day period shall commence upon completion of the distribution, as determined and certified by the lead managing underwriter or person performing similar functions; *And provided further,* that the deposit of any security with a depositary facility in exchange for an American depositary receipt or similar document shall be deemed a sale in the United States.

(c) *Securities of all Other Issuers.* An offer or sale of securities of any issuer may be made in reliance on § 230.903 provided that:

(1) Offering restrictions are adopted; and

(2) In the case of debt securities:

(i) The offer or sale, if made prior to the expiration of 90 days from the later of the date upon which the securities were first offered to persons other than distributors in reliance upon this Regulation S or the closing of the offering, or if made by a distributor holding an unsold allotment or subscription, is not made in the United States or to a U.S. person (other than a distributor); *Provided, however,* that in a continuous offering the 90-day period shall commence upon completion of the distribution, as determined and certified by the lead managing underwriter or person performing similar functions; and

(ii) The securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of such 90-day period and certification of non-U.S. beneficial ownership of the securities; or

(3) In the case of equity securities, the offer or sale, if made prior to the expiration of one year from the later of the date upon which the securities were first offered to persons other than distributors in reliance upon this Regulation S or the closing of the offering, or if made by a distributor holding an unsold allotment or subscription, is:

(i) Not made in the United States or to a U.S. person (other than a distributor); *Provided, however,* that in a continuous offering the one-year period shall commence upon completion of the distribution, as determined and certified by the lead managing underwriter or person performing similar functions; *Provided further,* that the deposit of any security with a depositary facility in

exchange for an American depository receipt or similar document shall be deemed a sale in the United States; and

(ii) Made pursuant to the following conditions: (A) The purchaser of the securities (other than a distributor) certifies that he is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person; (B) the purchaser of the securities (other than a distributor) agrees to resell such securities only in accordance with the provisions of this Regulation S, or pursuant to registration under the Act or an exemption therefrom, to persons who agree to comply with the provisions of this Regulation S; and (C) the issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S.

§ 230.906 Resales.

An offer or sale of securities by persons other than the issuer, an affiliate of the issuer, a distributor, or an affiliate of a distributor may be made in reliance on § 230.903 in accordance with the following requirements in addition to those set forth in § 230.904. Such persons may either:

(a) Offer and sell any securities in the same manner that such securities could be offered and sold pursuant to the provisions of § 230.905, except that:

(1) Offering restrictions need not be adopted; but

(2) The purchaser shall receive a confirmation or other notice, the acceptance of which binds him to offer and sell the securities in accordance with the provisions of this Regulation S or pursuant to registration under the Act or an exemption therefrom; or

(b) Offer and sell the securities specified in §§ 230.905(a) and 230.905(b) on or through the facilities of an established foreign securities exchange; *Provided*, if the securities offered or sold are securities of a reporting issuer, neither the seller nor any person acting on his behalf knows that any counterparty is a U.S. person; *Provided further*, that a directed selling effort by any persons other than the seller or any person acting on his behalf shall not affect the seller's ability to rely on this section.

By the Commission.

Johathan G. Katz,
Secretary.

June 10, 1988.

[FR Doc. 88-13715 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 659; Ref.: Notice Nos. 362, 600, 610]

Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is presenting two alternatives regarding the use of the word "light" (lite), referring to a product containing low or reduced calories. These alternatives are in addition to the proposals made in Notice No. 600. Specifically, the Bureau is proposing that the word "light" (lite), or any variation thereof, referring to calories, may be used as part of the brand or product name, or elsewhere, of a malt beverage, wine, or distilled spirit (less than 80 proof), provided: (1) It contains at least 20 percent fewer calories than the producer's regular product or, if the producer does not make a regular product, 20 percent fewer calories than a competitor's same or similar regular product; or (2) there appears on the label of the "light" (lite) product the number of calories in the producer's "light" (lite) and regular products or, if the producer does not make a regular product, the number of calories in a competitor's specifically named regular product.

AFT believes that either alternative will protect the consumer from any misleading impressions that might arise from the use of the word "light" (lite), and will be of value to industry members by providing them with guidance on use of the term.

In addition to the above, ATF is proposing to amend the serving size for "lite" (lite) distilled spirits, as previously addressed in Notice No. 600.

DATE: Written comments must be received on or before August 16, 1988.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385. Attn.: Notice No. 659.

FOR FURTHER INFORMATION CONTACT: James P. Ficareta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1986, ATF published Notice No. 600 in the Federal Register (51 FR 28836) proposing regulations addressing, in part, the use of the word "light" (lite) in the labeling and advertising of wine, distilled spirits, and malt beverages. The comment period for Notice No. 600 closed on November 10, 1986, however, it was subsequently reopened on November 14, 1986 (Notice No. 611, 51 FR 41355), finally closing on December 31, 1986. In response to both notices, ATF has received over 600 comments. An analysis of the comments will be made in the final rule on "light" (lite), upon publication in the Federal Register.

As mentioned on Notice No. 600, ATF believes the word "light" (lite) on the label of a food or alcoholic beverage connotes to consumers a product that has fewer calories "than something." For example, a "lite" pancake syrup may be labeled as containing less calories than "regular" syrup. A "lite" beer may be labeled as containing "fewer calories than our regular beer." In either case, however, the consumer is given a reference point and the particular low-calorie product has fewer calories than "something else."

Alternative No. 1

In Notice No. 600, the Bureau solicited comments on whether a fractional standard (e.g., $\frac{1}{2}$ fewer calories) should be established before a product could be labeled or advertised as "light" (lite), referring to low or reduced calories. No fractional standard, however, was actually proposed by the Bureau. Having analyzed the comments received in response to the notice of proposed rulemaking, the Bureau now believes that such a fractional standard should be considered. Therefore, ATF is now proposing that:

"Light" (Lite), or any variation thereof, may be used as part of the brand or product name, or elsewhere, for a malt beverage, wine, or distilled spirit (less than 80 proof), provided it contains at least 20 percent ($\frac{1}{5}$) fewer calories than the producer's regular product or, if the producer does not make a regular product, 20 percent fewer calories than a competitor's same or similar product.

A comparative statement (e.g., "contains 20% fewer calories than * * *") need not appear on the label, provided the producer makes a "regular" product or not. As proposed in Notice No. 600, the caloric content of any product labeled "light" (lite) would be required to appear on the brand label.

ATF believes that consumers have come to associate the term "light" (lite) with a product that is lower in calories than a comparable "regular" product. Since ATF determined in Notice No. 600 that an upper limit on caloric content of "light" (lite) products is unnecessary, a definite fractional standard on caloric content should be considered to prevent any misleading impressions that may be conveyed by the use of that term. In addition, the establishment of a fractional standard for use of the term "light" (lite) is consistent with that of other Federal agencies.

Having reviewed existing certificates of label approval for "light" (lite) alcoholic beverages, the Bureau believes that a 20 percent standard represents a significant reduction in calories. A 20 percent standard will also accommodate most existing products which are currently labeled and marketed as "light" (lite). ATF believes that those products, as currently formulated, have gained consumer acceptance over the years, and have helped to define the term "light." ATF believes that proposing a different (greater) standard would place an undue burden on the industry and would undoubtedly necessitate the reformulation of some existing brands. Furthermore, to prohibit products which are currently labeled as "light" from bearing such a designation could result in substantial consumer confusion.

Although a 20 percent standard is being proposed in this notice, ATF requests comments on whether another fractional standard should be considered. In that regard, for foods under their jurisdiction the Food and Drug Administration (FDA) requires that a product labeled as "light" (lite), without further qualification, have a caloric reduction that is at least 33 1/3 percent (1/3) less than essentially the same or similar food not so qualified. For meat and poultry products labeled as "light" (lite), the United States Department of Agriculture (USDA) requires a caloric reduction of at least 25 percent (1/4).

Alternative No. 2

As mentioned, ATF believes that food products labeled as "light" (lite) are often compared with "something" to provide the consumer with a reference point. This comparison may be with the producer's own regular product, or with a generic product (e.g., "contains 25% fewer calories than regular syrup"). Based on the above, the Bureau believes that the establishment of a fractional standard may not be necessary, provided the consumer is given some reference point upon which

to compare the "light" (lite) product. Therefore, although ATF is proposing action on Alternative No. 1, comments are being solicited on the following proposal:

"Light" (Lite), or any variation thereof, may be used as part of the brand or product name, or elsewhere, for a malt beverage, wine, or distilled spirit (less than 80 proof), provided there appears on the brand label the number of calories in both the producer's "light" (lite) and regular products. If the producer does not make a regular product, the number of calories in a competitor's specifically named same or similar regular product shall be stated.

Although ATF believes the establishment of a fractional standard would provide consistency regarding the use of the term "light" (lite), Alternative No. 2 would still afford consumers valuable information, by including the number of calories in both the producer's "light" (lite) and regular products, or the producer's "light" (lite) and a competitor's same or similar regular product.

Serving Size—"Light" (Lite) Distilled Spirits

In Notice No. 600, ATF proposed that statements of average analysis for "light" (lite) distilled spirits would be based on a serving size of 50 ml for straight products, such as gin, vodka, and bourbon, or any distilled spirits product over 50 proof. For products that are 50 proof and under, such as certain liqueurs, cordials and pre-mixed cocktails, the serving size would be 100 ml.

Having researched the issue further, the Bureau believes that the serving size should be based on the type of product involved, and not on the alcoholic content of the product. Therefore, the Bureau is now proposing that distilled spirits bottled at less than the minimum required 80 proof (e.g., "diluted gin," "diluted vodka," etc.), labeled as "light" (lite), shall have the statement of average analysis based on a 50 ml serving size. All other "light" (lite) distilled spirits, e.g., liqueurs, flavored brandies, cocktails, specialties, etc., shall be based on a 100 ml serving size. ATF believes this latest proposal more closely reflects the normal consumption size of distilled spirits.

Scope of Comments

The Bureau asks that comments be limited to *only* the proposals made in this notice. All other proposals made in Notice No. 600 will be addressed in the final rule.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has

determined that this proposal is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirement to collect information proposed in this notice has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration

cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

This notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Signed: April 27, 1988.

W.T. Drake,

Acting Director.

Approved: May 31, 1988.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 88-13653 Filed 6-16-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

Implementation of the Freedom of Information Reform Act; Uniform Fee Schedule and Administrative Guidelines; Reopening and Extension of Comment Period

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule, reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing comments regarding a proposed rule intended to implement the Freedom of Information Reform Act of 1986 and Executive Order 12600, as well as proposed revisions to the Department of Labor's procedural regulations that implement the Freedom of Information Act ("FOIA"). This action is taken to permit additional comment from interested persons.

DATE: Comments must be received on or before July 18, 1988.

ADDRESS: Send written comments to: Seth Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, U.S. Department of Labor, Room N-2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Miriam Miller, (202) 523-8188.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 23, 1988 (53 FR 5346), the Department of Labor published a proposed rule intended to revise 29 CFR Part 70, which concerns the production or disclosure of information or materials. Interested persons were requested to submit comments on or before March 24, 1988.

Because of the continuing interest in this proposal, the Department believes that it is desirable to reopen and extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 29 CFR Part 70 (Production or Disclosure of Information or Materials), is reopened and extended to July 18, 1988.

Signed at Washington, DC, this 13th day of June, 1988.

Ann McLaughlin,
Secretary of Labor.

[FR Doc. 88-13779 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-35]

Special Local Regulations for Marine Events Delaware River, Vicinity of Penns Landing, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making

SUMMARY: The Coast Guard is considering a proposal that would establish permanent special local regulations for the Delaware River in the vicinity of the Penns Landing area of downtown Philadelphia, Pennsylvania. This area is the site of several marine events each year, including Independence Day Celebrations, New Years Eve Celebrations, Jazz Festival, Fireworks Display, etc. These regulations would govern vessel activities during those events. Notice of precise dates and times that regulations are effective will be published in the Local Notice to Mariners and Federal Register Notice. The special local regulations are necessary to control vessel traffic due to the confined nature of the waterway, and the expected congestion at the time of the events.

DATE: Comments should be received on or before July 18, 1988.

ADDRESSES: Comments should be mailed or hand delivered to Command (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of that address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B.J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information: The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CG

05-88-35) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the proposal. No public hearing is planned, but one may be held if written requests for a hearing area received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Discussion of Regulation

The area covered by this proposal is the same as that covered by special local regulations issued for several events in 1987, including the Wisk Bright Night, We the People, and Constitution Day Celebrations. The special local regulations will provide safety for spectator craft during the events.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will be inconvenienced only slightly. The economic impact of this

proposal is expected to be so minimal, that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; CFR 1.46 and 33 CFR 100.35.

2. A new § 100.509 is added to read as follows:

§ 100.509 Delaware River, Philadelphia, Pennsylvania

(a) *Definitions*—(1) *Regulated Area*: The waters of the Delaware River from shore to shore, bounded to the south by a line drawn from Pier 30, Penns Landing, Delaware River, Philadelphia, Pennsylvania, at latitude 39°56'24.0" North, longitude 75°08'26.0" West across the river to the eastern shoreline, at Camden, New Jersey, at latitude 39°56'24.0" North, longitude 75°07'57.0" West, and to the north by the Benjamin Franklin Bridge.

(2) *The Coast Guard Patrol Commander* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Philadelphia.

(b) *Special Local Regulations* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the operator's vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(c) *Effective Period*. This section is effective during, and for one hour before the events start. The Commander, Fifth Coast Guard publishes a notice in the *Federal Register* and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that the section is in effect.

Dated: June 9, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District

[FR Doc. 88-13632 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register

Vol. 53, No. 117

Friday, June 17, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-557-803]

Initiation of Countervailing Duty Investigations; Certain Welded Carbon Steel Pipe and Tube Products from Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Malaysia of certain welded carbon steel pipe and tube products, as described in the "Scope of Investigations" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If these investigations proceed normally, we will make our preliminary determinations on or before August 17, 1988.

EFFECTIVE DATE: June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On May 24, 1988, we received a petition in proper form filed by the Standard Pipe, Line Pipe, Structural Tubing and Mechanical Tubing Subcommittees of the Committee on Pipe and Tube Imports and the individual manufacturers which are members of the aforementioned subcommittees, on behalf of the U.S.

industry producing certain welded carbon steel pipe and tube products. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Malaysia of certain welded carbon steel pipe and tube products receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigations

Under section 702(c) of the Act, we must determine within 20 days after a petition is filed whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on certain welded carbon steel pipe and tube products from Malaysia and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters in Malaysia of certain welded carbon steel pipe and tube products, as described in the "Scope of Investigations" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigations proceed normally, we will make our preliminary determinations on or before August 17, 1988.

Scope of Investigations

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the

appropriate *Tariff Schedules of the United States Annotated (TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

We have determined for the purpose of these initiations that the products covered by these investigations constitute four separate "classes or kinds" of merchandise. We thus will conduct four separate investigations concerning these products. The four separate "classes or kinds" of merchandise are as follows:

(1) Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain, threaded, threaded and coupled, or beveled ends. These products are generally produced to American Society of Testing Materials (ASTM) specifications A-53, A-120, or A-135. Imports of these products are classified under TSUSA categories 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610-3258, and 610-4925, and are classified under HS categories 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

(2) Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 26 inches in outside diameter known in the

industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. API line pipe not over 16 inches in outside diameter is classified under TSUSA categories 610.3208 and 610.3209, and is classified under HS categories 7306.10.1010 and 7306.10.1050.

(3) Certain heavy-walled carbon steel rectangular tubing having a wall thickness of 0.156 inch or greater, which is generally used for support members for construction or load-bearing purposes in construction, transportation, farm, and material-handling equipment. The product is generally produced to ASTM specification A-500, Grade B. Imports of heavy-walled rectangular tubing are classified under TSUSA category 610.3955, and are classified under HS category 7306.60.1000.

(4) Certain light-walled carbon steel rectangular tubing having a wall thickness of less than 0.156 inch, which is generally employed in a variety of end uses other than the conveyance of liquid or gas, such as agricultural equipment frames and parts, and furniture parts. The product is generally produced to ASTM specification A-513 or A-500, Grade A. Imports of light-walled rectangular tubing are classified under TSUSA category 610.4928, and are classified under HS category 7306.60.5000.

Allegation of Bounties or Grants

The petition lists certain practices by the Government of Malaysia which allegedly confer bounties or grants on manufacturers, producers, or exporters in Malaysia of certain pipe and tube products. We are initiating investigations on the following alleged programs:

- Export Tax Incentives:
 - Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales
 - Abatement of Five Percent of the Value of Indigenous Materials Used in Exports
 - Double Deduction for Export Credit Insurance Premiums
 - Double Deduction for Export Promotion Expenses
 - Industrial Building Allowance
 - Pioneer Status Under the Investment Incentives Act of 1968.
 - Pioneer Status Under the Promotion of Investments Act of 1986.
 - Investment Tax Allowance Under the Promotion of Investments Act of 1986.
 - Export Credit Refinancing.
- Although not specifically alleged by petitioners, we are also investigating

whether the Malaysian industry producing pipe and tube products receives countervailable benefits under the following programs, which we have found to be either countervailable or not used in previous Malaysian investigations:

- Export Tax Incentives:
- Allowance of a Percentage of Net Taxable Income based on F.O.B. Value of Export Sales Under Section 29 of the Investment Incentives Act of 1968, as Amended.
- Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-Made Products
- Other Tax Incentives:
- Accelerated Depreciation Allowance of 40 Percent of Qualifying Expenditures Under the Income Tax Act of 1967, as Amended in 1979
- Reinvestment Allowance of 25 Percent for Capital Expenditures on a Factory, Plant or Machinery Under Section 133A of the Income Tax Act
- Export Insurance Program.
- Medium- and Long-Term Government Financing.
- Reduction in the Cost of State Land for New Industry and Agriculture.
- Preferential Financing for Bumiputras.

This notice is published pursuant to section 702(c)(2) of the Act.

June 13, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-13763 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Geological Survey et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-268. **Applicant:** U.S. Department of the Interior, U.S. Geological Survey, Ithaca, NY 14850-4094. **Instrument:** Multiple Piezometer Groundwater Monitoring System. **Manufacturer:** Westbay Instruments LTC, Canada. **Intended Use:** See notice 52 FR 32824, August 31, 1987. **Reasons for This Decision:** The foreign apparatus is capable of providing: (1) water pressure measurements; (2)

uncontaminated groundwater samples; and (3) permeability tests.

Docket No.: 88-150. **Applicant:** Princeton University, Princeton, NJ 08544. **Instrument:** Diagnostic Neutral Beamline. **Manufacturer:** Culham Laboratory, United Kingdom. **Intended Use:** See notice at 53 FR 15101, April 27, 1988. **Reasons for This Decision:** The foreign article provides a beam energy of 80 kV, 100 millisecc pulses modulated at kHz, a duty cycle of 5 minutes, density of 6 ma/cm², at a focal length of 4.2 meters and a divergence of 0.5°.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-13762 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Institute of Human Origins et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC.

Docket No.: 87-308R. **Applicant:** Institute of Human Origins, Berkeley, CA 94709. **Instrument:** Mass Spectrometer, Model 215. **Manufacturer:** Mass Analyser Products, Ltd., United Kingdom. **Intended Use:** See notice at 52 FR 43218, November 10, 1987. **Reasons for This Decision:** The foreign instrument provides a sensitivity of 6×10^{-4} amps/torr for Ar and a background for M/e 36 less than 5×10^{-14} cm³.

Docket No.: 88-118. **Applicant:** The Ohio State University, Columbus, OH 43210. **Instrument:** Electron Microprobe, Model CAMEBAX SC 50. **Manufacturer:** Cameca Instruments Inc., France. **Intended Use:** See notice at 53 FR 15102, April 27, 1988. **Reasons for This Decision:** The foreign instrument is

capable of image analysis combining x-ray, electron and cathodoluminescence signals.

Docket No. 88-133. Applicant: University of Michigan, Ann Arbor, MI 48109-1063. **Instrument:** Mass Spectrometer, Model MAP215. **Manufacturer:** Mass Analyzer Products Ltd., United Kingdom. **Intended Use:** See notice at 53 FR 15099, April 27, 1988. **Reasons for This Decision:** The foreign instrument is capable of analysing small gas samples (down to 10^{-13} cm³ STP), provides background for M/e 36 and 132 of $<5 \times 10^{-14}$ cm³ and $<10^{-15}$ cm³ STP respectively and a sensitivity for Ar of 6×10^{-4} amps/torr at 200 μ A.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-13759 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

National Aeronautics and Space Administration et al; for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-148. Applicant: National Aeronautics and Space Administration, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109.

Instrument: Black and White Recorder and DEC Unibus Controller, Model Fire 240 LBR. **Manufacturer:** MacDonald Dettwiler Technologies, Inc., Canada.

Intended Use: The instruments will be used to support flight project(s) which require near real-time output during the period from pre to post encounter.

Application Received by Commissioner of Customs: March 24, 1988.

Docket No.: 88-200. Applicant: NASA, Lyndon B. Johnson Space Center, NASA Road 1, Houston, TX 77058. **Instrument:** Electron Microscope, Model JEM-2000EX/DP/DP. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** The instrument will be used for studies of bulk samples and separated minerals of lunar rocks, meteorites, terrestrial rocks, terrestrial minerals, cosmic dust (orbital, stratospheric, and earth bound), and microorbital debris. The overall objectives of the investigations are the study of the chronological and geochemical evolution of solid objects in the solar system, especially the Earth's moon, and the identification of possibly differing chemical components which have contributed to the formation of the Solar System. **Application Received by Commissioner of Customs:** May 11, 1988.

Docket No.: 88-201. Applicant: University of Kentucky, Veterinary Science Department, Room 108, Gluck Equine Research Center, Lexington, KY 40506-0099. **Instrument:** Scanning Electron Microscope with Accessories, Model S-800-1. **Manufacturer:** Hitachi Scientific, Japan. **Intended Use:** The instruments will be used to investigate and define the pathologic changes effected by different microbial agents as visualized by alterations in the surface topography of tissues and isolated cells. The experiments to be undertaken include: Investigation of the pathogenesis of viral bacterial and parasitic infections; better definition of host-parasite relationships; visualization of various pathogens and their ultrastructural influence on the surface topography of tissues and cells; the study of various hormonal and physiological processes; determination and mapping of the site(s) of cell surface receptors for different infective agents. **Application Received by Commissioner of Customs:** May 12, 1988.

Docket No.: 88-202. Applicant: University of Kentucky, Entomology Department, 5225 Agriculture Science Center North, Lexington, KY 40506-0091. **Instrument:** Electron Microscope, Model H-600-3. **Manufacturer:** Hitachi Scientific, Japan. **Intended Use:** The instrument will be used to conduct research on direct visualization of entomopathogens and their ultrastructural influences on insectan tissue, insect-plant interactions, study of hormonal and physiological processes affecting insect growth and development, study of viruses

associated with insect parasitoids, ultrastructure of insectan tissue particularly as related to tissues involved in semiochemical communication. In addition, the instrument will be used for educational purposes in the course ENT 626. **Application Received by Commissioner of Customs:** May 12, 1988.

Docket No.: 88-203. Applicant: New Mexico Institute of Mining and Technology, Geoscience Department, Socorro, NM 87801. **Instrument:** Gas Isotope Mass Spectrometer, Model Delta-E. **Manufacturer:** Finnigan MAT, West Germany. **Intended Use:** The instrument will be used for research on ore deposits and other projects including hydrology, paleoclimatology, igneous petrology, environmental chemistry and sedimentary petrology. In addition, the instrument will be used in Geochemistry 565 Stable Isotope Geochemistry, Geochemistry 571, Principles of Isotope Mass Spectrometer and Hydrology 526 Isotope Hydrology to instruct students in the techniques of sample preparation, the running of the mass spectrometer, and the interpretation of the resulting data. **Application Received by Commissioner of Customs:** May 12, 1988.

Docket No.: 88-204. Applicant: University of Kentucky, Veterinary Science Department, Room 108, Gluck Equine Research Center, Lexington, KY 40506-0099. **Instrument:** Electron Microscope, Model H-7000-2T. **Manufacturer:** Hitachi Scientific, Japan. **Intended Use:** The instrument will be used for the following applications:

- (1) Investigation of the pathogenesis of specific viral, bacterial and parasitic infections of the horse in an attempt to improve definition of host-parasite relationships;
- (2) Further definition of host-parasite relationships;
- (3) Further diagnosis of poorly defined tumors and the identification of certain protozoan bacterial and viral infections;
- (4) Assist the study of specific hormonal and nutritional influences affecting bone and muscle development in the growing horse;
- (5) Enable detection and characterization of various viral polypeptides whereby a more rapid means of diagnosing the carrier state in specific equine viral infections can be achieved.

In addition, the instrument will be used for educational purposes in the course ENT 626—Insect Pathology, a course relating to the pathogenesis of infectious and non-infectious diseases of the horse.

Application Received by Commissioner of Customs: May 12, 1988.

Docket No.: 88-205. Applicant: USDA-ARS, Beltsville Agricultural Research Center, BARC-West, Building 050, Room 100, Beltsville, MD 20705. *Instrument:* NMR Spectrometer, MSL-300 (System C). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* Studies of materials in either the solid or liquid state including: Plant tissues, microorganisms (bacteria, fungi, algae, etc.), soil and its components, animal tissue, isolated biomolecules, macromolecules (e.g., proteins, antibodies, humics) and small organic and inorganic compounds. The objective of the experiments conducted will be to provide data concerning the environment of particular atoms or compounds within the material. This information will be used to answer questions concerning the structure of the compound or matrix, bonding, and other interactions of the atoms with each other and with other atoms or compounds. The answers obtained will be pertinent to projects addressing issues of concern to United States agriculture. *Application Received by Commissioner of Customs:* May 16, 1988.

Docket No.: 88-206. Applicant: USDA-ARS, Eastern Regional Center, 600 East Mermaid Lane, Philadelphia, PA 19118. *Instrument:* NMR Spectrometer, Model MSL-300 (System A). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* The instrument will be used for studies of clay minerals, soil particulates, cell wall materials, polymers, and other agricultural commodities. Experiments conducted will include CP-MAS on solids, high resolution experiments on solutions, multipulse experiments and other state-of-the-art NMR experiments. *Application Received by Commissioner of Customs:* May 16, 1988.

Docket No.: 88-207. Applicant: USDA-ARS, Northern Regional Research Center, 1815 N. University Street, Peoria, IL 61604. *Instrument:* NMR Spectrometer, Model MSL-300 (System D). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* Investigation of molecular dynamics of phospholipids and enzyme interactions in plant cell membranes, characterization of plant components such as starches, vegetable oils, and polyisoprenes, determining the structure of lipid films and coatings, and determining the chemical properties of starch-synthetic polymer composites. *Application Received by Commissioner of Customs:* May 16, 1988.

Docket No.: 88-208. Applicant: USDA-ARS, Richard B. Russell Agricultural Research Center, 950 College Station

Road, P.O. Box 5677, Athens, GA 30613. *Instrument:* NMR Spectrometer, Model MSL-300 (System E). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* The instrument will be used for studies of the following phenomena:

- (a) Intact whole plant (forage and grain) parts.
- (b) Intact plant cell walls.
- (c) Plant mesophyll and nonmesophyll tissue.
- (d) Isolated polysaccharides.
- (e) Isolated polyphenols.
- (f) Isolated and synthesized phenol-carbohydrate mixtures.
- (g) Isolated biologically active constituents of plants.
- (h) Silica deposition and sites in plants.
- (i) Protein structure.

Experiments to be conducted will include:

- (a) Location and identification of cell wall components of animal forages and other plant materials *in situ*.
- (b) Determination of the type and location of the various states of water in grains and forages.
- (c) Structure determination of isolated polysaccharides, polyphenols and phenol-carbohydrate mixtures.
- (d) Determination of the conformation of biologically active constituents isolated from plants on small amounts of material <5mg at 7 Tesla.
- (e) Determination of the location and amount of fungal infestation in plant material.
- (f) Verification of the structure of synthetic materials used as models for intact components of plants.

Application Received by Commissioner of Customs: May 16, 1988.

Docket No.: 88-209. Applicant: University of Colorado-Boulder, Department of Geological Sciences, Campus Box 250, Boulder, CO 80309-0250. *Instrument:* Electron Microprobe, Model WDS/EDS. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to perform x-ray analyses of materials surfaces using combined wavelength and energy dispersive techniques with a spatial resolution of 1 micron. Geologists will use the instrument to obtain qualitative and quantitative chemical analyses of crystalline and amorphous solids, and to determine element distribution in multiphase materials. The chemical compositional data obtained will allow determination of the physical conditions that have led to the formation of earth materials. In addition, the instrument will be used to teach graduate level students how to obtain chemical analyses of geological material.

Application Received by Commissioner of Customs: May 16, 1988.

Docket No.: 88-210. Applicant: McCrone Research Institute, 2820 S. Michigan Ave., Chicago, IL 60616. *Instrument:* Electron Microscope, Model JEM-1200EX/SEG/DP-DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to teach the course Fundamentals of Asbestos Analysis. *Application Received by Commissioner of Customs:* May 16, 1988.

Docket No.: 88-212. Applicant: USDA-ARS, Metabolism and Radiation Research Laboratory, State University Station, Fargo, ND 58105. *Instrument:* NMR Spectrometer, Model MSL-300 (System F). *Manufacturer:* Bruker Analytische Messtechnik, West Germany. *Intended Use:* The instrument will be used in the study of cryobiology and preservation of insects to determine the conditions for cold temperature insect germplasm preservation and the physiological mechanisms used by insects of economic importance to survive over winter. *Application Received by Commissioner of Customs:* May 17, 1988.

Docket No.: 88-213. Applicant: University of Illinois, 207 Henry Administration Building, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Scanning Electron Microscope with Accessories, Model Stereoscan. *Manufacturer:* Cambridge Instruments, United Kingdom. *Intended Use:* Studies of polymers and new semiconductor materials used in fabricating high speed electronic devices. Investigations will be conducted to understand how to make ultra-small structures and how to utilize such structures to make new types of electronic devices that can be used in the realization of faster communication and computer circuits. *Application received by Commissioner of Customs:* May 17, 1988.

Docket No.: 88-214. Applicant: University of Virginia, Charlottesville, VA 22901. *Instrument:* Electron Microscope, JEM-4000EX/THGZ with Accessories. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* Studies of metals alloys, ceramics, composite materials, electronic materials and polymeric or biological materials. Experiments will consist of high resolution electron microscope imaging of microstructure, and determination of the relationship of microstructure to materials properties. In addition, the instrument will be used for education purposes in the course Electron Microscopy of Crystals and Advanced Electron Microscopy.

Application Received by Commissioner of Customs: May 17, 1988.

Docket No.: 88-215. Applicant: University of Dallas, 1845 E. Northgate Drive, Irving, TX 75062-4799. *Instrument:* Rapid Kinetics Accessory, SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in a course in physical chemistry to determine the dependence of the rates of fast chemical reactions on concentrations and temperature. *Application Received by Commissioner of Customs:* May 17, 1988.

Docket No.: 88-216. Applicant: Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* Field Portable Remote Radon Detector, Model 611. *Manufacturer:* Alpha Nuclear Corporation, Canada. *Intended Use:* The instrument will be used for a long-term monitoring study of hourly changes in shallow soil gas radon concentrations on the island of Oahu and an analysis of correlations between observed short-term variations in radon activities and the occurrence of meteorological changes. Another experiment involves investigation of the effects of soil permeability and soil moisture on subsurface radon concentrations and on the variability of radon with changing weather conditions. *Application Received by Commissioner of Customs:* May 18, 1988.

Docket No.: 88-217. Applicant: Thomas Jefferson University, Jefferson Medical College, Laboratory of Pennsylvania Muscle Institute IID2, Department of Physiology, 1020 Locust Street, Philadelphia, PA 19107. *Instrument:* Myograph-Microfluorometry System. *Manufacturer:* Dr. K. Guth, West Germany. *Intended Use:* The instrument will be used for the simultaneous measurement of chemical energy usage and mechanical output of smooth and striated muscles. *Application Received by Commissioner of Customs:* May 19, 1988.

Docket No.: 88-218. Applicant: University of Notre Dame, Notre Dame, IN 46556. *Instrument:* Low Energy Electron Diffractometer, Model SPA-LEED. *Manufacturer:* Leybold, West Germany. *Intended Use:* The instrument will be used for studies of surface reconstructions and defects on the faces of semiconductors, particularly II-VI semiconductors, diluted magnetic semiconductors and strained silicon crystals. The phenomena that will be investigated are the fundamental physical laws which govern the arrangement of atoms, and thus surface structures on semiconductor surfaces including defect formations such as steps, domain walls, finite terrace sizes, etc. In addition, the instrument will be

used for educational purposes in the course Research and Dissertation Physics 699. *Application Received by Commissioner of Customs:* May 19, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 88-13758 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Pennsylvania Muscle Institute et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-043. Applicant: Pennsylvania Muscle Institute, University of Pennsylvania, Philadelphia, PA 19104-6063. *Instrument:* High Intensity Flash Photolysis Device. *Manufacturer:* Gert Rapp, West Germany. *Intended Use:* See notice at 52 FR 48851, December 28, 1987. *Reasons for this Decision:* The foreign instrument provides focusing optics and pulse shaping optimized for initiating contractile events in muscle fibers. *Advice Submitted by:* The National Institutes of Health, May 17, 1988.

Docket No.: 88-066. Applicant: The Biomechanics Institute Inc. and Harvard School of Public Health, Boston, MA 02215. *Instrument:* Mass Spectrometer, Model MGA 2000. *Manufacturer:* Airspec, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 1812, January 22, 1988. *Reasons for this Decision:* The foreign instrument provides a response time of less than 160 ms to a step change in water vapor concentration and a warmed fast inlet sampling catheter. *Advice Submitted by:* The National Institutes of Health, May 17, 1988.

Docket No.: 88-073. Applicant: USDA-ARS, New Orleans, LA 70124. *Instrument:* Fluorometer, Model SF-30 with Temperature Logger, Model TL-100F. *Manufacturer:* Richard Brancker, Ltd., Canada. *Intended Use:* See notice at 53 FR 4866, February 18, 1988. *Reasons for this Decision:* The foreign instrument provides accurate in situ measurement of chlorophyll fluorescence intensity along with temperature of plant leaves. *Advice Submitted by:* The National Institutes of Health, May 17, 1988.

Comment: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument. We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 88-13760 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

Research Foundation of State University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-135. Applicant: Research Foundation of the State University of New York, Stony Brook, NY 11794. *Instrument:* Angle-turned Frequency Doubler for Spectra-Physics 380-D Ring Dye Laser. *Manufacturer:* Vrije Universiteit, The Netherlands. *Intended Use:* See notice at 53 FR 15099, April 27, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of applicant. The instrument and accessory were made by the same manufacturer. The accessory is pertinent to the intended uses and we know of no comparable domestic accessory. We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 88-13761 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-DS-M

The University of Texas at Arlington et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 88-101. Applicant: The University of Texas at Arlington, Arlington, TX 76019. **Instrument:** Electron Microscope, Model JEM-1200EX. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** See notice at 53 FR 9959, March 28, 1988. **Instrument Ordered:** September 30, 1987.

Docket No.: 88-103. Applicant: University of Louisville, Louisville, KY 40292. **Instrument:** Electron Microscope, Model CM10. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 53 FR 12446, April 14, 1988. **Instrument Ordered:** February 16, 1988.

Docket No.: 88-104. Applicant: The University of Illinois, Urbana, IL 61801. **Instrument:** Electron Microscope with Accessories, Model CM12/STEM. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 53 FR 12446, April 14, 1988. **Instrument Ordered:** May 8, 1987.

Docket No.: 88-106. Applicant: Nathan Kline Institute, Orangeburg, NY 10962. **Instrument:** Electron Microscope, Model CM10/PC. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 53 FR 12447, April 14, 1988. **Instrument Ordered:** October 27, 1987.

Docket No.: 88-112. Applicant: Medical Foundation of Buffalo, Inc., Buffalo, NY 14203-1196. **Instrument:** Electron Microscope with Accessories, Model JEM-100CX. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** See notice at 53 FR 15102, April 27, 1988. **Instrument Ordered:** November 4, 1987.

Docket No.: 88-122. Applicant: The University of Chicago, Department of Molecular Genetics and Cell Biology, Chicago, IL 60637. **Instrument:** Electron Microscope, Model CM10/PC. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** See notice at 53 FR 15103, April 27, 1988. **Instrument Ordered:** December 22, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United

States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 88-13764 Filed 6-16-88; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Nicholas Carlisi and Seymour Herman from an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

Nicholas Carlisi and Seymour Herman (Appellants) filed an appeal with the Secretary of Commerce under section 307(c)(3) ((A) of the Coastal Zone Management Act in response to an objection by the New York Department of State (State) to the Appellants' consistency certification for U.S. Army Corps of Engineers Application No. 87-0102-L3 for closing off and back-filling an indented boat slip is Island Park, Nassau County, New York.

Since the filing of this appeal, the State has determined that the proposed activity is consistent with New York's Coastal Zone Management Program so long as the Appellants obtain a tidal wetlands permit. The Appellants have agreed to obtain this permit prior to undertaking the proposed activity. Accordingly, the Appellants have requested that the appeal be withdrawn.

Upon notification by the parties that this matter has been resolved amicably, the appeal has been dismissed. Nicholas Carlisi and Seymour Herman are barred from filing another appeal from the New York Department of State's objection to Nicholas Carlisi and Seymour Herman's original consistency certification.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Mackey, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825

Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200. (Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: June 13, 1988.

William E. Evans,
Under Secretary for Oceans and Atmosphere.
[FR Doc. 88-13728 Filed 6-16-88; 8:45 am]
BILLING CODE 3510-08-M

Marine Mammals; Issuance of Permit; Dr. Dan Salden (P397)

On June 23, 1987, notice was published in the Federal Register (52 FR 23580) that an application had been filed by Dr. Dan Salden, Box 1772, Southern Illinois University, Illinois 62026-1772 to take humpback whales (*Megaptera novaeangliae*) by harassment.

Notice is hereby given that on June 13, 1988, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805 Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: June 13, 1988.

Nancy Foster,

Director, Office of Protected Resources and
Habitat Programs.

[FR Doc. 88-13772 Filed 6-16-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions and Deletions

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Additions and deletions from
Procurement List.

SUMMARY: This action adds to and
deletes from Procurement List 1988
commodities to be produced and
services to be provided by workshops
for the blind or other severely
handicapped.

EFFECTIVE DATE: July 18, 1988.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite
1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: On
March 18, April 8, and April 22, 1988, the
Committee for Purchase from the Blind
and Other Severely Handicapped
published notices (53 FR 8945, 53 FR
11694, and 53 FR 13310) of proposed
additions to and deletions from
Procurement List 1988, December 10,
1987 (52 FR 46926).

Additions

After consideration of the relevant
matter presented, the Committee has
determined that the commodity and
services listed below are suitable for
procurement by the Federal Government
under Pub. L. 92-28, 85 Stat. 77 (1971) (41
U.S.C. 46-48c), and 41 CFR 51-2.6.

I certify that the following actions will
not have a significant impact on a
substantial number of small entities. The
major factors considered were:

- The actions will not result in any
additional reporting, recordkeeping or
other compliance requirements.
- The actions will not have a serious
economic impact on any contractors for
the commodity and services listed.
- The actions will result in
authorizing small entities to produce the
commodity and provide the services
procured by the Government.

Accordingly, the following commodity
and services are hereby added to
Procurement List 1988:

Commodity

Cover, Mattress: 7210-00-082-5739

Services

Janitorial/Custodial, Federal Building,
4th and F Street, Anchorage, Alaska
Janitorial/Custodial, Federal Office
Building, and Joseph C. O'Mahoney
Federal Center, Cheyenne, Wyoming

Deletions

After consideration of the relevant
matter presented, the Committee has
determined that the commodities and
service listed below are no longer
suitable for procurement by the Federal
Government under Pub. L. 92-28, 85 Stat.
77 (1971) (41 U.S.C. 46-48c), and 41 CFR
51-2.6.

Commodities

Tape Stiffener Assembly: 1330-01-051-
1533

Slippers, Convalescent Patient

6532-00-241-6393

6532-00-279-7794

6532-00-079-7889

6532-00-079-7899

6532-00-079-7902

6532-00-079-7904

6532-01-011-5055

6532-01-011-5056

6532-01-011-5057

Service

Grounds Maintenance, Naval
Postgraduate School, Monterey,
California.

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-13738 Filed 6-16-88; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Proposed additions to
Procurement List.

SUMMARY: The Committee has received
proposals to add to Procurement List
1988 commodities to be produced and
services to be provided by workshops
for the blind and other severely
handicapped.

Comments must be received on or
before: July 18, 1988.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite

1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41 U.S.C.
47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6.
Its purpose is to provide interested
persons an opportunity to submit
comments on the possible impact of the
proposed actions.

If the Committee approves the
proposed additions, all entities of the
Federal Government will be required to
procure the commodities and services
listed below from workshops for the
blind or other severely handicapped.

It is proposed to add the following
commodities and services to
Procurement List 1988, December 10,
1987 (52 FR 46926).

Commodities

Cover, Generator Set

6115-00-945-7545

6115-00-960-2703

Pad, Writing Paper

7530-00-285-3090 (GSA Regions W, 2,
3, 4, 7, 8, 9 and 10)

7530-01-124-7632 (GSA Regions 4 and
6)

Pad, Shoulder Strap

P.S. Item No. D-1212

Services

Janitorial/Custodial, Building 1400, Hill
Air Force Base, Utah
Mailroom Services, U.S. Geological
Survey, 12201 Sunrise Valley Drive,
Reston, Virginia

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 88-13739 Filed 6-16-88; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974: Notice of System of Records

AGENCY: Commodity Futures Trading
Commission.

ACTION: Notice of new systems of
records.

SUMMARY: The Commodity Futures
Trading Commission is updating its
systems of records maintained in
accordance with the Privacy Act to
include two systems of recordings of
Commission meetings. This notice is
intended to inform the public of the
existence and character of these
systems of records. The Commission is
also proposing routine uses for these
systems.

DATES: Effective Date of Systems: June 17, 1988.

Comments concerning routine uses must be received on or before July 18, 1988.

ADDRESS: Comments concerning routine uses should be addressed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT:

Ellyn S. Roth, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION: In accordance with the directives of the Privacy Act of 1974, 5 U.S.C. 552a, and the Commission's implementing regulations, 17 CFR Part 146, the Commission is updating its notice of the existence and character of each system of records it maintains by publishing a description of two new systems of records.

Pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act"), and the Commission's regulations thereunder, 17 CFR Part 147, the Commission is generally required to make a complete transcript or electronic recording of its closed meetings or closed portions thereof which records fully the proceedings of the closed meeting or closed portions.¹ The Commission must maintain each transcript, recording or set of minutes for at least two years after the meeting to which it relates or until one year after the conclusion of any agency proceeding with respect to which the closed meeting or portion was held, whichever occurs later.²

In compliance with these requirements, the Commission maintains electronic recordings, transcripts or sets of minutes of all closed Commission meetings or closed portions of Commission meetings. It is also the Commission's practice to record all of its meetings which are held open to public observation. With respect to all of its meetings, whether open or closed, the Commission maintains indices of the meetings, organized by year and subdivided by subject. The indices contain the names of some individuals, and the corresponding recordings, transcripts or minutes contain some information about those individuals. These indices and records constitute

two systems of records (one system consisting of records of open Commission meetings and another system consisting of records of closed Commission meetings) which are protected by the Privacy Act of 1974. This notice is published to inform the public of the existence and location of these systems of records.

Description of Systems of Records

CFTC-30

SYSTEM NAME:

Open Commission meetings.

SYSTEM LOCATION:

Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a Commission meeting open for public observation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the individuals who are the subject of discussion at an open Commission meeting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f), and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is a matter of public record and may be disclosed without restriction. See also, the routine uses applicable to many of the Commission's systems of records, including this system, set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760-61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or microfiche; audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics, which are discussed at the meetings.

SAFEGUARDS:

General office security measures, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever is later); then retired to the National Archives or stored on the premises.

SYSTEM MANAGERS AND ADDRESSES:

Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system or records, should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

1. The information recorded during Commission meetings concerning individuals who are the subject of discussion at the meetings is generated by the staff in one or more Divisions.
2. The indices are prepared from the recordings, transcripts and/or minutes.

CFTC-31

SYSTEM NAME:

Exempted Closed Commission meetings.

SYSTEM LOCATION:

Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a closed Commission meeting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to individuals who are the subject of discussion at a closed Commission meeting. This information consists of (a) investigatory

¹ 5 U.S.C. 552b(f)(1); 17 CFR 147.7(a). In certain limited circumstances, the Commission may keep a set of minutes which fully describes all matters discussed at the meeting or the closed portion. See 5 U.S.C. 552b(f)(1); 17 CFR 147.7(b).

² 5 U.S.C. 552b(8)(2); 17 CFR 147.8(c).

materials compiled for law enforcement purposes whose disclosure the Commission has determined could impair the effectiveness and orderly conduct of the Commission's regulatory, enforcement and contract market surveillance programs or compromise Commission investigations, or (b) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with the Commission to the extent that it identifies a confidential source.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f), and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to many of the Commission's systems of records, including this system, were set forth under the caption, "General Statement of Routine Uses," in 47 FR 43759, 43760-61 (October 4, 1982), and subsequently modified in 47 FR 44830, 44831 (October 12, 1982).

STORAGE

Paper records in file folders or microfiche; audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics, which are discussed at the meetings.

SAFEGUARDS:

General office security measures, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (*i.e.*, at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever is later); then retired to the National Archives or stored on the premises.

SYSTEM MANAGERS AND ADDRESSES:

Jean A. Webb, Secretary of the Commission, Commodity Futures

Trading Commission, 2033 K Street NW., Washington, DC 20581.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, record access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the source of records in the system be described.

Issued in Washington, DC, on June 13, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-13714 Filed 6-16-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Acquisition Regulations; Data Acquired From Contractors Under Defense Contracts

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice.

SUMMARY: The Department of Defense is firmly committed to reducing the amount of data acquired from contractors under defense contracts. These data requirements are imposed in contracts through the citing of Data Item Descriptions (DID's) in the Contract Data Requirements List (CDRL). We suspect that there are DID's which overspecify requirements, are duplications of other DID's, or otherwise result in an unnecessary paperwork burden upon the public. Internal efforts are being undertaken by DoD to reduce the number of these types of DID's. Your help in specifically identifying the DID's which could be eliminated or improved will be appreciated. The input resulting from this request will be used to reduce the number of DID's and thereby reduce the paperwork burden placed upon the public. At this time comments are requested on DID's that fall into the following categories (reference DOD 5010.12-L, Acquisition Management Systems and Data Requirements Control List AMSDL): ATTS (Automated Test Technology Standards; CDNC (Computer Aided Design/Numerical Control); EMCS (Electromagnetic Compatibility); ENV (Environmental

Requirements and Related Test Methods); NDTI (Nondestructive Testing and Inspection); NUOR (Nuclear Ordnance); Comments on other categories of DID's were requested in a previous Federal Register Notice and will be requested in future Federal Register Notices.

DATE: Comments should be received by August 16, 1988.

ADDRESS: Comments should be forwarded to Mr. Carl Berry, Defense Data Management Office, OASD (P&L) DDMO, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: A copy of the DID's may be obtained from Mr. Carl Berry, Defense Data Management Office, 5203 Leesburg Pike, Suite 1401, Falls Church, VA 22041, telephone (703) 756-2554.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 14, 1988.

[FR Doc. 88-13778 Filed 6-16-88; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Subcommittee (Ground Based Free Electron Laser Technology Integration Experiment Technical Advisory Group) will meet in closed session in La Jolla, California, on June 28, 1988.

The mission of the Subcommittee is to provide the SDI Advisory Committee an independent analysis and assessment of the plans and approaches for the ground based free electron laser technology integration experiment. At the meeting on June 28, 1988 the subcommittee will discuss status of laser research and management issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C., App II, (1982)), it has been determined that this SDI Advisory Subcommittee meeting, concerns matters listed in 5 U.S.C., 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

June 13, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-13777 Filed 6-16-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army**Army Science Board; Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (ASB).

Dates of Meeting: 7-8 July 1988.

Times of Meeting: 0800-1700 hours each day.

Place: Norton Air Force Base, California.

Agenda: The Army Science Board's Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issue of the study effort; i.e. penetration aid development, midcourse discrimination, and BM/C3. The Subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-13771 Filed 6-16-88; 8:45 am]

BILLING CODE 3710-06-M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 6-7 July 1988.

Times of Meeting: 0900-1700 hours, 6 July 1988. Open 1200-1600 hours, 7 July 1988. Closed

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Threat of AIDS on Operational Deployments of Army Forces to a Theater will be hosted by the offices of DCS Operations & Plans and the Surgeon General, U.S. Army, and consist of testimony and informal

discussions with the medical and laboratory scientists and epidemiologists. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the Committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-13712 Filed 6-16-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY**Assistant Secretary for International Affairs and Energy Emergencies****Proposed Subsequent Arrangement**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/JA(EU)-41, for the transfer from Nukem, Hanau, the Federal Republic of Germany to Japan, of 18.5 kilograms of uranium containing a maximum of 4.999 kilograms of uranium-235, 27.02 percent enrichment, for fabrication of fuel for the JOYO experimental breeder reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13674 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number DE-SC05-S-JA-383, for the supply of 3 kilograms of uranium metal enriched to 19.75 percent in the isotope uranium-235 to the Toshiba Corporation, Japan for use in laser isotope separation experiments. U.S. Nuclear Regulatory Commission license XSNM2340 has been issued for export of this material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13675 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned

agreement involves approval for the supply of the following material:

Contract Number WC-EU-301, for the return of a sample to the Central Bureau for Nuclear Measurements, Geel, Belgium, containing 4.2 grams of uranium enriched to 3.2 percent in the isotope uranium-235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13676 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-939, for the sale of 579.831 grams of natural uranium to the Compagnie Generale des Matieres Nucleaires (COGEMA) for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13677 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-938, for the sale of 374.914 grams of uranium containing 0.753 grams of isotope uranium-235, and 5.188 grams of plutonium, to the Transuranium Institute, Karlsruhe, the Federal Republic of Germany, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13678 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer:

RTD/SD(EU)-49, for the transfer of 108 kilograms of fissile plutonium contained in 12 mixed-oxide fuel assemblies to Switzerland for use as

fuel in the Beznau power reactors. The mixed-fuel assemblies will be fabricated by either Belgonucleaire, Dessel, Belgium, or by Alkem, Hanau, the Federal Republic of Germany from plutonium located at Compagnie Generale des Matieres Nucleaires (COGEMA), Le Hague, France.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13750 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/JA(SW)-2, for the transfer of 8 spent fuel segments containing 2.097 kilograms of uranium enriched to 2.42 percent in the isotope uranium-235, and 13 grams of plutonium from Sweden to Japan. These segments are being returned following power ramp testing in Sweden.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this

subsequent arrangement will not be inimical to the common defense and security

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 13, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-13751 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Plans for Distribution of the Draft Environmental Impact Statement for the Superconducting Super Collider

AGENCY: U.S. Department of Energy.

ACTION: Notice.

On January 22, 1988, the Department of Energy (DOE) issued a Notice of Intent (53 FR 1821) to prepare an Environmental Impact Statement (EIS) for the Superconducting Super Collider (SSC) and to conduct scoping meetings in the vicinity of each of the seven sites identified on the Best Qualified List. Both oral comments and written comments on the scope of the EIS were received during the scoping period. These comments are being considered by DOE in preparing the draft EIS, which is scheduled to be available for public review and comment in August 1988.

A mailing list of over 11,000 individuals, organizations and other agencies has been developed for the SSC EIS. The draft EIS, excluding appendices, will be approximately 350 pages long. Appendices to the draft EIS will be included in a separate volume expected to be in excess of 4,000 pages. In order to provide the pertinent environmental information to as many persons as reasonably possible, it is the DOE's intent to distribute the draft EIS and appendices to other Federal Agencies with jurisdiction by law or with special expertise and to any appropriate Federal, state or local environmental regulatory agency. The DOE also will provide multiple copies of the draft EIS and appendices to each of the DOE public reading rooms and community libraries identified in the January 22, 1988, Notice of Intent. A copy of the draft EIS without the appendices will be provided to all other parties on the mailing list.

In accordance with § 1502.18 (d) of the Council on Environmental Quality Regulations for implementing the National Environmental Policy Act, the Department will furnish a copy of the

appendices to any person, organization or agency submitting a written request for the additional document. Such requests should be submitted as soon as possible after receipt and consideration of the information contained in the EIS. Requests for the appendices should be submitted to: Dr. Wilmut Hess, Chairman, SSC Site Task Force, ER-65, GTN, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545.

Dated this 10th day of June 1988, in Washington, DC.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88-13752 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Intent to Award a Grant Agreement to Energy Education Services, Inc.

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of grant number DE-FG01-88CE10450 for the NEED Project.

SUMMARY: The U.S. DOE Office of State and Local Assistance Programs, Energy Management and Extension Branch, is preparing a request to fund a proposal submitted by Energy Education Services, Inc. The work to be performed consists of the development and delivery of three NEED Leadership Training Workshops during the summer of 1988. The workshops will provide information on a variety of energy issues and topics. The sessions will be part of an overall effort to provide training and supporting materials on how to develop NEED/energy education networking activities. The attendees will learn how to utilize existing communications systems, to secure program funds and develop a statewide newsletter.

ELIGIBILITY: Award of this effort is restricted to Energy Education Services, Inc. (NEED Project) because of its exclusive capability demonstrated by its own highly specialized network of state and local NEED coordinators in 26 states and territories. The proposed grantee has seven years of experience in organizing coordinating and implementing a successful nationally recognized program for energy education and community conservation activities. The term of this grant will be five months.

FOR FURTHER INFORMATION CONTACT: Rosemarie H. Marshall, MA-453.2, U.S.

DOE, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-13689 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Solicitation Number DE-PS01-88CE26570]

Announcement of Competitive Grant Program; District Heating and Cooling Technology Development

PURPOSE: The United States Department of Energy, Office of Conservation and Renewable Energy, Office of Buildings and Community Systems is entering into a competitive grant program to encourage the development of technically advanced and innovative District Heating and Cooling (DHC) systems.

BACKGROUND: The U.S. Department of Energy (DOE) is interested in promoting the performance of research aimed at reducing costs and improving the efficiency of District Heating and Cooling (DHC) systems. The Department is interested in research relating to DHC components and systems, and the rehabilitation of older district heat systems.

For purposes of the forthcoming solicitation, District Heating and Cooling (DHC) is a term used to describe the delivery of heating and cooling energy to multiply building structures via a common distribution system. DHC energy is produced in one or more centralized facilities, often as part of simultaneous electricity production in a process known as cogeneration.

The purpose of this solicitation will be to solicit research in any of the following phases of development: Basic and applied research; exploratory development; technology development; or engineering development. Topical areas of research interest include but are not limited to: District Cooling (cooling energy production, distribution, storage); District Heating and Cooling (advanced transmission techniques, energy loss reduction, piping and components, low temperature systems); Renovation of Existing Systems (in place retrofitting techniques, conversion of steam systems to hot water, end-user refurbishment); and Novel Concepts (chemical energy transfer, advanced cogeneration systems, simultaneous

heating and cooling). Research is to be completed in 24 months.

Up to 6 awards for research are expected to be made in late 1988 or early 1989. Up to \$300,000 will be allocated for this program.

Eligibility: Any public or private entity may respond to this solicitation.

It is anticipated that a formal solicitation will be issued in late June of 1988. Written request for copies of this solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue SW., Washington, DC 20585, Attn: Document Control Specialist, MA-451.1.

Thomas S. Keefe,

Director, Contract Operations Division "B",
Office of Procurement Operations.

[FR Doc. 88-13679 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order With Anchor Gasoline Corp. and Canal Refining Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Anchor Gasoline Corporation, including its wholly owned subsidiary, Canal Refining Company, (Anchor) for a maximum amount of \$30 million. The settlement requires Anchor to pay a minimum of \$9 million plus interest, as well as specified percentages of its annual adjusted net income for the next four consecutive fiscal years beginning May 1, 1989. The percentage of its annual adjusted net income which Anchor must pay ranges up to 50% of all adjusted net income in excess of \$5 million.

DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., RG-30, Washington, DC., (202) 586-8900.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Resolution of Regulatory Issues
 - A. Areas of Dispute
 - B. Determination of Maximum Liability
- III. Determination of Reasonable Settlement Amount
- IV. Terms and Conditions of the Consent Order

I. Introduction

During the period from August 19, 1973, through January 27, 1981, Anchor was a refiner engaged in, *inter alia*, the business of purchasing and refining crude oil, extracting and fractionating natural gas liquids, recovering condensate from natural gas, and selling the condensate and refined petroleum products which resulted from those operations.

ERA conducted audits of Anchor Gasoline Corporation's compliance with the federal petroleum price and allocation regulations. The audits resulted in the issuance of two Proposed Remedial Orders (PRO).

The first PRO, issued to Anchor's wholly owned subsidiary, Canal Refining Company (Canal) on April 18, 1985, resulted in the issuance of a Remedial Order (RO) to Canal by the Office of Hearings and Appeals (OHA), *Canal Refining Company*, 14 DOE ¶ 83,023 (1986), which was affirmed on appeal to the Federal Energy Regulatory Commission (FERC) on December 30, 1986. *Canal Refining Company*, 37 FERC ¶ 61,329 (1986). The RO found that, beginning in July 1980 and ending in January 1981, Canal received excess revenues in sales of its monthly inventory of old oil to a crude oil reseller, in the form of substantial below-market discounts on purchases of identical volumes of stripper-certified crude oil from the same reseller. Canal has appealed the RO to the United States District Court for the Northern District of Oklahoma, *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. 87-C-294-E (N.D. Okla.); and *United States v. Canal Ref. Co.*, C.A. 87-C-145-E (N.D. Okla.).

The second PRO, which was issued to Anchor, the parent, on August 26, 1986, is now pending before OHA and alleges that Anchor overcharged its customers in sales of gasoline, No. 2 distillate and general refinery products during the period September 1973 through January 27, 1981, and in sales of condensate during the period September 1973 through July 1978.

In the lengthy negotiation process leading to the proposed settlement, ERA carefully analyzed the results of the audits, the nature of the alleged regulatory violations, but, most importantly, the substantially impaired financial condition of Anchor and, therefore, its limited ability to pay any judgment which might be rendered at the end of lengthy and complex enforcement proceedings.

The settlement calls for Anchor to pay a maximum of \$30 million. Anchor is required to make minimum payments totalling \$9 million, plus interest on

those payments, as well as specific percentages of its adjusted net income for the next four consecutive fiscal years beginning May 1, 1989, in settlement of its potential liability for violations of DOE regulations.

II. Resolution of Regulatory Issues

A. Areas of Dispute

The disputes resolved by the Consent Order include the alleged improper sales by Anchor of gasoline, No. 2 distillate, and general refinery products, in violation of the price regulations set forth in 10 CFR Part 212, Subparts E and K, addressed in the PRO issued to Anchor on August 26, 1986. The Consent Order also resolves those disputes arising from the RO issued by OHA on May 8, 1986, to Canal, as affirmed by the FERC, finding that Canal charged unlawful prices in seven sales of crude oil in violation of 10 CFR 212.183(b) and 212.10(a). The proposed Consent Order would resolve the PRO, the RO and any other remaining areas of dispute with Anchor and Canal.

B. Determination of Maximum Liability

ERA calculated the maximum amount for which Anchor might be liable as a result of the violations alleged in the August 26, 1986 PRO, now pending before OHA. ERA determined this amount by calculating the regulatory pricing impact of Anchor's alleged improper calculation of its shrinkage costs, product costs, non-product costs, and equal application recoveries. The principal amount of the resulting alleged overcharges is \$6,694,403 (excluding equal application recoveries) plus interest. The maximum total potential liability is approximately \$21 million, including interest.

The proposed settlement also resolves the matters at issue in the RO issued to Canal. That RO, and the PRO upon which it was based, alleged that during the period July 1, 1980, through January 27, 1981, Canal received illegal revenue by reselling crude oil at prices in excess of those permitted by applicable petroleum price regulations. The RO finds that Canal received illegal revenues totalling \$13.5 million, plus interest in the amount of approximately \$19.5 million, for a total of \$33 million.

Thus, the total potential maximum liability of Anchor is approximately \$54 million.

III. Determination of Reasonable Settlement Amount

ERA does not propose to settle based on the litigation risk values of the case. In determining a reasonable settlement amount for the allegations of regulatory

violations discussed above, ERA reviewed several factors. The most significant factor in arriving at this proposed settlement was ERA's consideration of the current and projected economic condition of Anchor. Anchor made available to ERA extensive financial information, including financial statements, tax returns, valuation reports reflecting Anchor's net asset values, both on a going-concern and a liquidation basis, and extensive underlying documents on which the reports, returns and statements were based. As a result of this review, it became apparent to ERA that Anchor would not be capable of satisfying a judgment in an amount approaching the potential maximum liability alleged by ERA. ERA also considered that a judgment in DOE's favor, even if obtained, would be a multiple of Anchor's consolidated net worth, yet that judgment liability might well be subordinate to future secured lenders.

Consideration of all the foregoing factors led ERA to the conclusion that this settlement is the best method for ERA to realize any substantial recovery in this case. Based on all these considerations—the financial condition of Anchor, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue in order to obtain any recovery, and the low potential for any significant recovery with litigation success—ERA concluded that the resolution of these matters for the amounts prescribed in the proposed Consent Order is an appropriate settlement and is in the public interest.

IV. Terms and Conditions of the Consent Order

The Consent Order provides that Anchor will pay a maximum of \$30 million. Anchor will make minimum payments of not less than \$9 million. An initial payment of \$5 million will be made within ten (10) days of the effective date of the Consent Order. Further scheduled payments of \$2 million and \$.75 million will be due on October 1, 1989, and September 1, 1990, respectively, with interest set at 8.67% per annum. Additionally, a minimum participation payment of \$1.25 million will be paid, no later than September 1, 1994. Following the first payment to DOE, ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations.¹

ERA has attributed 60% of each payment made pursuant to the Consent Order to crude oil

In addition to the foregoing minimum payments, Anchor is obligated to pay the DOE certain percentages of its adjusted net income. The percentages of Anchor's adjusted net income which must be paid to the DOE on an annual basis range from 12½% for adjusted net income between \$1.5 million and \$2 million to 50% for all amounts of adjusted net income including and in excess of \$5 million.

The agreement further provides that Anchor shall pay 50% of cash receipts or cash values received from sales of property, plant and equipment which, in the aggregate, exceed \$1.25 million.

The agreement provides for a limit on Anchor's principal payment obligations to the DOE in the amount of \$30 million.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Anchor Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. DOE will hold a public hearing on this proposed Consent Order beginning at 10:00 a.m. on July 18, 1988, in Room GE-086 at 1000 Independence Avenue SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this Notice in the Federal Register, and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order.

Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the Federal Register.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provision of 10 CFR 205.9(f).

violations for distribution by OHA in accordance with the provisions of the Final Settlement Agreement in the Stripper Well case. In re. The Department of Energy Stripper Well Exemption Litigation, M.D.L. 378 (D. Kan.) ERA has determined to petition the OHA to initiate Subpart V proceedings to distribute the remaining 40% of the payments made to purchasers of Anchor's refined petroleum products who may have been harmed

Issued in Washington, DC on June 10, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

Consent Order With Anchor Gasoline Corporation

I. Introduction

101. This Consent Order is entered into between Anchor Gasoline Corporation ("Anchor") and the Economic Regulatory Administration ("ERA") of the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all pending and potential civil and administrative disputes, claims and causes of action between DOE and Anchor arising out of the Federal Petroleum Price and Allocation Regulations administered and enforced by DOE and its predecessor agencies during the period August 19, 1973 through January 27, 1981 (all matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order"). The matters covered by this Consent Order include, but are not limited to, (i) a Proposed Remedial Order ("PRO") issued by ERA to Anchor on August 26, 1986, (ii) a Remedial Order ("RO") issued by the Office of Hearings and Appeals ("OHA") to Canal Refining Company ("Canal") dated May 8, 1986, and affirmed on appeal by the Federal Energy Regulatory Commission ("FERC") on December 30, 1986, *Canal Refining Company*, 14 DOE ¶ 83,023 (1986), *aff'd* 37 FERC ¶ 61,329 (1986), and (iii) *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. 87-C-294-E (N.D. Okla.), and *U.S.A. v. Canal Ref. Co.*, C.A. 87-C-145-E (N.D. Okla.). The PRO issued to Anchor alleges that Anchor overcharged its customers in sales of gasoline, No. 2 distillate, and general refinery products in violation of the price regulations set forth in 10 CFR Part 212, Subparts E and K, during the period from September 1973 through October 1980, and in sales of crude oil condensate in violation of the price regulations set forth in 10 CFR Part 212, Subpart D, during the period September 1973 through July 1978. The RO issued to Canal as affirmed finds that Canal charged unlawful prices in seven transactions during the period from July 1, 1980 through January 27, 1981, in violation of 10 CFR 212.183(b) and 212.10(a).

II Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority

conferred upon DOE by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 120009, 42 FR 46267 (September 15, 1977); Executive Order No. 12028, 43 FR 4957 (February 7, 1978); and 10 CFR 205.199].

202. ERA was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation Order No. 0204-4, the Secretary of Energy delegated the responsibility for administration of the Federal Petroleum Price and Allocation Regulations, including authority to enter into consent orders on behalf of DOE, to the Administrator of the ERA. Authority to enter into this Consent Order on behalf of the DOE has been appropriately delegated to the agency official executing this Consent Order.

203. For purposes of this Consent Order:

(a) "DOE" means the ERA, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy and any predecessor or successor agencies.

(b) "Federal Petroleum Price and Allocation Regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil, refined petroleum products, and residual fuel oil including the entitlements and mandatory oil import programs, administered by DOE. For purposes of this Consent Order, the Federal Petroleum Price and Allocation Regulations include (without limitation) all pricing, allocation, reporting, certification and recordkeeping requirements imposed by or under: The Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, and any amendments to those acts; Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130, 140 and 150 and in 10 CFR Parts 205, 210, 211, 212 and 213; and rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, subpoenas and other pronouncements issued or made by DOE under or with respect to such statutes or regulations.

(c) "Anchor" means (1) individually and collectively Anchor Gasoline Corporation and all of its subsidiaries and affiliates thereof including its wholly owned subsidiary Canal Refining Company and the successors of each thereof, (2) all of Anchor's petroleum related assets and activities as refiner producer operator working interest or royalty interest owner reseller retailer and natural gas processor (3) all non

petroleum assets and activities and entities, and (4) the directors, officers, partners, stockholders, agents, representatives and employees of each thereof.

(d) "The period covered by this Consent Order" means the period from August 19, 1973, through January 27, 1981.

(e) Other terms used herein have the same meaning as in the Federal Petroleum Price and Allocation Regulations, unless the context indicates otherwise.

III. Facts and Determinations

The stipulated facts and determinations upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Anchor was a "refiner" as that term was defined in the Federal Petroleum Price and Allocation Regulations and was subject to the jurisdiction of the DOE. Through its subsidiaries, Anchor was a corporation engaged in, *inter alia*, the business of purchasing and refining crude oil, extracting and fractionating natural gas liquids, recovering condensate from natural gas, and selling the condensate and refined petroleum products which resulted from those operations.

302. During the period covered by this Consent Order, Canal owned and operated a refinery and was therefore a "refiner of crude oil" as that term was defined at 10 CFR 211.62.

303. During the period covered by this Consent Order, Anchor was required to submit Refiner's Monthly Reports under the Mandatory Petroleum Price Regulations, 10 CFR Part 212, pursuant to 10 CFR 212.126.

304. ERA conducted an audit to determine Anchor's compliance with the Federal Petroleum Price and Allocation Regulations during the period covered by this Consent Order. The audit resulted in the issuance of a PRO to Anchor which is pending in administrative litigation before OHA (Case No. KRO-03330). As of the date of signing this Consent Order, OHA has neither affirmed nor dismissed ERA's allegations of regulatory violations by Anchor.

305. ERA conducted an audit to determine Canal's compliance with the Federal Petroleum Price and Allocation Regulations during the period covered by this Consent Order. The audit resulted in the issuance of a PRO and an RO to Canal, which was affirmed on appeal to the FERC on December 30, 1986, *Canal Refining Company*, 14 DOE ¶ 83,023 (1986), *aff'd* 37 FERC ¶ 61,329 (1986). Canal appealed that FERC order to the United States District Court for

the Northern District of Oklahoma. 306. Anchor desires to settle all civil liability claims between itself and the ERA concerning the matters covered by this Consent Order rather than incur the time, expense, and inconvenience of further administrative or judicial proceedings relating thereto. Moreover, Anchor asserts that if ERA were to prevail on all or even a substantial part of its contentions, Anchor would be forced to liquidate its assets to pay even a portion of the refund required. Similarly, the ERA has determined that it is in the best interest of the government and the general public to conclude the protracted enforcement proceedings concerning the matters covered by this Consent Order by means of this Consent Order. Therefore in consideration of the foregoing, and in order to resolve their differences regarding the matters at issue, Anchor and the ERA agree to the terms and conditions contained herein.

IV. Terms and Conditions

401. In full and final settlement of all matters covered by this Consent Order, and in lieu of all other remedies which have been or might be sought by the DOE against Anchor for such matters under 10 CFR 205.199) or otherwise, Anchor agrees to pay to DOE not less than nine million dollars (\$9,000,000) in the manner specified in the paragraphs below. Payments shall be by wire transfer, pursuant to directions to be provided in a timely manner to Anchor by DOE.

402. *Scheduled Payments.* Payment of \$7.75 million shall be made by Anchor to the DOE or its designee as follows:

a. Dates Due.

(i) Five million dollars (\$5,000,000) within ten (10) days of the effective date of this Consent Order;

(ii) Two million dollars (\$2,000,000) on or before October 1, 1989, plus interest, at the rate of 8.67% per annum, on the unpaid balance of the two million dollars (\$2,000,000) accrued from the effective date of this Consent Order; and

(iii) Seven hundred and fifty thousand dollars (\$750,000) on or before September 1, 1990, plus interest, at the rate of 8.67% per annum, on the unpaid balance of the seven hundred and fifty thousand dollars (\$750,000) accrued from the effective date of this Consent Order.

b. Interest on Unpaid Balance

Without limiting any other remedy interest shall accrue on any balance of any of the scheduled payments specified in paragraph 402(a) unpaid after the payment date specified at the rate of

8.67% per annum and shall be paid from the respective due date of payment.

c. Acceleration. Acceleration of payments pursuant to paragraph 402(a) may be made at the election of Anchor without penalty, but any amount accelerated shall be credited to Anchor for purposes of calculating its Adjusted Net Income and DOE's participation therein, as specified in paragraph 403, only in the year such payment would have been due pursuant to the schedule set out in paragraph 402(a). Interest on any accelerated payment shall be calculated from the effective date of the Consent Order to the date of the accelerated payment.

403(a). Participation Payments. In addition to the Scheduled Payments provided for in paragraph 402(a), Adjusted Net Income participation payments (hereinafter "Participation Payments") shall be paid, as required by the formula set forth below, by Anchor to the DOE on September 1, 1990, 1991, 1992 and 1993, each of such dates being denominated a "Calculation Date". Each of the Participation Payments shall consist of an amount equal to Anchor's Adjusted Net Income (as defined in paragraph 403(c) and Exhibits thereto) for the fiscal year ending on the preceding April 30 multiplied by the applicable participation percentage set forth below:

12½%—Adjusted Net Income from \$1.5 million to \$1,999,999.99;
22½%—Adjusted Net Income from \$2 million to \$2,999,999.99;
32½%—Adjusted Net Income from \$3 million to \$3,999,999.99;
42½%—Adjusted Net Income from \$4 million to \$4,999,999.99;
50½%—Adjusted Net Income on amounts including and in excess of \$5 million.

403(b). Minimum Participation Payment. On September 1, 1993, Anchor shall pay to DOE one million and two hundred fifty thousand dollars (\$1,250,000) less any Participation Payments made pursuant to paragraph 403(a); provided, however, that Anchor may, at its election, by notice to the DOE no later than August 1, 1993, postpone all or part of such payment for one year until September 1, 1994, and provided further that interest shall be paid on any unpaid balance, at the prime rate value as published in the *Federal Reserve Bulletin* for the month of August, 1993, on any such payment postponed between September 1, 1993, and the earlier of the date of payment or September 1, 1994.

403(c). Definitions. In determining Anchor's Adjusted Net Income, the definitions and accounting procedures

annexed hereto as Exhibits A, B and C and made a part hereof shall conclusively apply.

403(d). Interest. No interest is payable on Participation Payments paid on or before the Calculation Dates. Without limiting any other remedy, however, interest shall be payable on any amounts of Participation Payments not paid on the respective Calculation Date, at the prime rate value as published in the *Federal Reserve Bulletin* for the month preceding the respective Calculation Date, from that respective Calculation Date to the date of payment of that respective Participation Payment.

403(e). Audit of Participation Payments. On each Calculation Date, Anchor shall provide to the DOE a complete set of its certified audited financial statements for the preceding fiscal year or the certified audited financial statements for any successor firm resulting from a Business Combination as defined in Exhibit C of this Consent Order. Anchor shall also provide to the DOE at the same time a summary calculation sheet, certified to by a senior Anchor officer or director and by Anchor's accounting firm, prepared in a consistent manner, based on a good faith application of the formula, and all supporting schedules, relevant to the Adjusted Net Income calculations specified in Exhibits A, B, and C. Anchor agrees that it shall utilize either its current accounting firm or an accounting firm approved for use by DOE prior to the respective Calculation Date. DOE shall notify Anchor of any alleged deficiency in such Participation Payment within ninety (90) days of the Calculation Date or within ninety (90) days of receipt of additional data requested by the DOE, but in no event later than one hundred eighty (180) days after the Calculation Date. The failure of DOE to notify Anchor of an alleged deficiency in the Participation Payment within ninety (90) days of the Calculation Date, or within ninety (90) days of receipt of additional information requested, shall preclude DOE from challenging the computation of that Participation Payment at a later date. A deficiency in a Participation Payment arising from a good faith effort to calculate such Participation Payment shall not constitute a default or violation of the provisions of this Consent Order pursuant to paragraph 701 but shall cause the payment of interest pursuant to paragraph 403(d). Anchor shall immediately notify DOE of any adjustment to a Participation Payment discovered after a Calculation Date by Anchor. If DOE does not object to Anchor's adjustment within ninety (90)

days of such notification, with one hundred (100) days of notification of such adjustment, Anchor shall pay any deficiency found or DOE shall credit any overpayment toward the next payment obligation of Anchor, whichever is appropriate. The DOE at all times during the term of this Consent Order reserves the right to review the books and records, and to interview officers and employees, of Anchor or any successor firm during normal business hours and upon prior written notice.

403(f). Participation Payment in Sales or Other Transfers of Assets. Anchor shall pay, upon the sales, exchanges or other transfers of its property, plant and equipment that total in excess of one million two hundred fifty thousand dollars (\$1,250,000), fifty percent (50%) of the total cash receipts and cash value received in excess of one million two hundred fifty thousand dollars (\$1,250,000) either in part or in the aggregate resulting from such sales, exchanges or other transfers, within thirty (30) days of the receipt of such cash receipts and cash value ("Due Date"), except that this requirement shall not apply to the extent that the revenues from such sales, exchanges or other transfers are used to satisfy the payment obligations in paragraphs 402(a) and 403(b). Any sales, exchanges or other transfers of such assets shall be made only to unaffiliated purchasers at fair market value, unless approved in advance by DOE. As used herein, "cash value" means the fair market value of any non-cash payment, as determined by an appraisal of fair market value performed by an independent third party, to be mutually agreed upon by the parties to this Consent Order.

403(g). Interest. Interest shall be payable on any amounts of the Participation Payment in Sales or Other Transfers of Assets pursuant to paragraph 403(f) not paid upon the Due Date, at the prime rate value as published in the *Federal Reserve Bulletin* for the month preceding the Due Date.

403(h). Change in fiscal year. If Anchor should change its fiscal year from the current non-calendar fiscal year basis, or similarly, if following a Business Combination as defined in Exhibit C, the successor firm's fiscal year is other than the current non-calendar fiscal year, then the following shall apply: (a) The provisions of paragraph 402(a) shall remain unchanged; (b) the Calculation Dates in paragraph 403(a) shall, as required, be changed to dates six (6) months after the end of each new fiscal year; (c)(i) for the transition year to a new fiscal year, the

Participation Payment provided for in paragraph 403(a) shall be calculated by taking the Adjusted Net Income for the period from the close of the previous full fiscal year to the opening date of the new fiscal year ("the first calculation period"), and multiplying such Adjusted Net Income by the applicable participation percentage set forth in paragraph 403(a), and multiplying the resulting amount by a fraction, the numerator of which is the number of days in the first calculation period and the denominator of which is 365, and (c)(ii) for the fiscal year including April 30, 1993, the Participation Payment shall be calculated by taking the Adjusted Net Income for the period from the beginning of the current fiscal year to April 30, 1993 ("the second calculation period"), and multiplying this amount by the applicable participation percentages in Section 403(a), and multiplying the resulting amount by a fraction, the numerator of which is the number of days in the second calculation period and the denominator of which is 365.

403(i). *Split Year.* If there is a Business Combination as defined in Exhibit C to the Consent Order, Adjusted Net Income for the year of the combination shall be calculated using the definitions in Exhibits A, B and C for the portion of the fiscal year preceding the Business Combination and using the definitions in Exhibits A, B, and C as applied solely to the portion of the Business Combination, respectively, and the results so calculated shall be added for the purposes of determining the Participation Payment, if any, due to DOE in accordance with paragraph 403(a) of this Consent Order.

404(a). *Term of Agreement; Cap for All Payments.* The term of this Consent Order shall expire on the earlier of (i) the date on which the last payment pursuant to paragraphs 402 and 403 is made but in no event prior to September 1, 1993, or (ii) the date on which the firm has paid to the DOE a total of \$30 million, exclusive of interest payments, provided, however, that in the event of either Anchor's or Canal's bankruptcy, the DOE's claim shall be reduced to \$9 million, less all prior principal payments made pursuant to paragraphs 402(a) and 403(a) and (b), plus all accrued unpaid Participation Payments, pursuant to paragraph 403(a), other than unpaid Participation Payments that reflect a failure to comply with the minimum payment requirement of paragraph 403(b), plus all unpaid Participation Payments in Sales or Other Transfers of Assets pursuant to paragraph 403(f), plus accrued unpaid interest.

404(b). *Dividends.* Anchor shall be prohibited from paying dividends in excess of \$200,000 in each fiscal year. During the term of this Consent Order, in any event, dividends can be made only in years that Adjusted Net Income is positive and then for not more than the amount of such Adjusted Net Income.

404(c). *Debt Restriction.* Anchor shall not, directly or indirectly, create, issue, assume, guarantee, incur, or become liable for, contingently or otherwise, or extend the maturity of, or become responsible for, payment of any indebtedness, as defined in Exhibit B attached hereto, which would be senior or otherwise have priority over Anchor's obligation to the DOE as agreed to under this Consent Order except as provided herein. Anchor may undertake such indebtedness in amounts not to exceed (1) one million dollars (\$1,000,000) until all payments pursuant to paragraph 402(a)(ii) are made, (2) one million five hundred thousand dollars (\$1,500,000) until all payments pursuant to paragraph 402(a)(iii) are made, and (3) thereafter, fifteen percent (15%) of Anchor's net worth; in no event, however, shall the restriction contained in (3) require the retirement of indebtedness properly assumed prior to the period in which (3) is applicable. Anchor shall not undertake any such indebtedness in amounts in excess of the restricted levels set forth above unless Anchor submits to DOE a written request and justification for any proposed increase above the restricted levels set forth above and DOE does not disapprove. Anchor's request within thirty (30) days of receipt.

404(d). *Distributions.* Payments of any kind and/or loans by Anchor to shareholders are prohibited, unless approved in advance in writing by DOE, except as provided (1) in paragraph 404(b) and, (2) subject to the qualifications below, with respect to salaries and normal, reimbursable business expenses that are tax deductible to Anchor of, and participation in Anchor's IRS qualified Retirement Plan that is in compliance with ERISA by, shareholders of Anchor employed by Anchor as of January 1, 1988. In no event, however, shall such salaries or payments as participation in the Retirement Plan exceed the level of the amounts paid to any such shareholder as of the end of the last fiscal year immediately preceding the effective date of this Consent Order, from the effective date of this Consent Order until April 30, 1989; or shall such business expenses paid in Anchor's fiscal year 1989 to any such shareholder

exceed the total amount paid to that shareholder in Anchor's fiscal year 1988. Thereafter, the limitations of paragraph (vi) of Exhibit A attached hereto shall apply to such salaries, payments and expenses.

V. Issues Resolved

501. Anchor warrants that there is no litigation pending against the DOE initiated by or participated in by Anchor which in any way relates to or arises out of the Federal Petroleum Price and Allocation Regulations or related claims arising under the Freedom of Information Act, as amended, 5 U.S.C. 552 ("FOIA") other than the proceedings referenced in this Consent Order. Anchor hereby agrees to release any and all claims, demands, liabilities or causes of action that Anchor has asserted or might be able to assert against DOE, and any employee of DOE, in any manner related to compliance with the Federal Petroleum Price and Allocation Regulations governing crude oil and other covered products during the period covered by this Consent Order.

502(a). Compliance by Anchor with this Consent Order shall be deemed by DOE to constitute full compliance by Anchor for all administrative and civil purposes with the Federal Petroleum Price and Allocation Regulations for the matters covered by this Consent Order. In consideration of performance by Anchor as required under this Consent Order, DOE hereby releases completely and for all purposes all administrative and civil judicial claims, demands, liabilities, or causes of action, specifically including claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Anchor before or after the date of this Consent Order, for alleged violations for the Federal Petroleum Price and Allocation Regulations during the period covered by this Consent Order. DOE shall not, except as explicitly provided in paragraph 701 herein, initiate or prosecute any civil matter against Anchor with respect to the matters covered by this Consent Order or cause or refer any such matter to be initiated or prosecuted, or directly or indirectly aid in the initiation of any such civil matter.

502(b). Nothing contained herein shall preclude DOE from defending the validity of the Federal Petroleum Price and Allocation Regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Anchor for noncompliance with the Federal

Petroleum Price and Allocation Regulations.

502(c). DOE expressly agrees that it shall not seek or recommend any criminal fines or penalties against Anchor based solely on the information and evidence in its possession at present for the matters covered by this Consent Order; provided that nothing in this Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. In addition, the DOE shall not otherwise contest Anchor's compliance with the Federal Petroleum Price and Allocation Regulations covering crude oil and other covered products during the period covered by this Consent Order. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by a purchaser of crude oil or other covered products, or against any civil action brought under any statute or regulation other than the Federal Petroleum Price and Allocation Regulations. Finally, this Consent Order does not affect or prejudice any private action brought by a third party against Anchor or by Anchor against any third parties, including any action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from Anchor or the rights of Anchor to seek contribution from third parties.

503(a). Within seven (7) days of the effective date of this Consent Order, Anchor shall execute and deliver to DOE a motion, in the form of Exhibit D, to expunge the Magistrate's Report and Recommendation on the Cross Motions for Summary Judgment of Canal and DOE, filed April 27, 1988, in *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. No. 87-C-294-E (N.D. Okla.). At the same time, Anchor shall execute and deliver to DOE a stipulation to dismiss with prejudice, in the form of Exhibit E hereto, those claims arising in the proceedings in the United States District Court for the Northern District of Oklahoma, *Canal Ref. Co. v. U.S. Dept. of Energy*, C.A. No. 87-C-294-E (N.D. Okla.), *United States v. Canal Ref. Co. and Anchor Gasoline Corp.* C.A. No. 87-C-145-E (N.D. Okla.). Within ten (10) days thereafter, the DOE shall join in the motion and execute the stipulation and file them with the court.

503(b). Within seven (7) days after the effective date of this Consent Order Anchor and the DOE shall file or cause to be filed appropriate pleadings and shall take all other steps necessary to

withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending or subsequently filed before the OHA or FERC.

504. Execution of this Consent Order constitutes neither an admission by Anchor nor a finding by DOE of any violation by Anchor of any statute or any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties against Anchor for the period covered by this Consent Order and the issues resolved by this Consent Order, and DOE expressly agrees that it shall not seek any such civil penalties against Anchor. No payment made by Anchor hereto is to be considered for any purpose as a penalty, fine or forfeiture or attributable to settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision in this Article V with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for newly discovered regulatory violations committed by Anchor but only on the ground that Anchor concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of a material fact made by Anchor during the course of the audits or during the course of the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Anchor upon which this agreement is based.

VI. Public Disclosures, Recordkeeping and Confidentiality

601. To assist the DOE in the distribution of the payments made pursuant to this Consent Order, Anchor shall preserve its respective existing records relating to the two proceedings identified in paragraphs 304 and 305, and Anchor shall maintain such records as are necessary to comply with the terms of this Consent Order. Except as otherwise provided in this Consent Order, upon completion of Anchor's compliance with the terms of paragraphs 401 through 404, Anchor shall be relieved of its obligation to comply with the recordkeeping requirements of the regulations relating to the matters settled by this Consent Order.

602. This Consent Order is subject to public disclosure pursuant to the requirements of the FOIA. Anchor waives all claims may have that some

or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

603. The DOE shall treat any sensitive commercial and financial information obtained from Anchor as confidential and proprietary and shall not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. The DOE shall provide Anchor with ten (10) days' advance notice, if possible, of any pending disclosure of any such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE shall retain information it has acquired from Anchor in accordance with DOE's established record retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE shall make such information available to the Department of Justice ("DOJ") in response to a request pursuant to DOJ's statutory authority by a duly authorized representative of the DOJ. If so requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Anchor may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information. Notwithstanding this paragraph, DOE may use information and documents obtained from Anchor in connection with any investigation, administrative proceeding or judicial proceeding to which DOE is a party.

VII. Contractual Undertaking

701. It is the understanding and express intention of Anchor and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provisions herein, Anchor and DOE each reserves the right to institute a civil action in an appropriate United States District Court if necessary to secure enforcement of the terms of this Consent Order and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. In the event that Anchor defaults or violates any provisions or terms set forth within this Consent Order, all payments contemplated under this Consent Order shall be a forfeited and due a

payable immediately upon the occurrence of such default or violation. Payments to be accelerated include all outstanding Scheduled Payments, outstanding Annual and Minimum Participation Payments, Participation Payments in Sales or other Transfers of Assets, and all outstanding interest on such payments. Consistent with Departmental policy, DOE shall undertake the defense of this Consent order, upon its becoming effective as a final order, in response to any litigation challenging the Consent Order's validity in which DOE is named as a party. Anchor agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. As required by § 205.199H, Anchor hereby waives its right to administrative or judicial review of this order.

IX. Effective Date

901. This Consent Order shall become effective as a final order of DOE upon notice to that effect being published in the Federal Register. If no such notice is published within one hundred twenty (120) days after the execution of this Consent Order, Anchor shall not be bound by the Consent Order unless it expressly agrees to be bound by giving written notice to DOE. Prior to the date that the Consent Order becomes effective as a final order, DOE shall publish notice in the Federal Register and in that notice shall provide not less than thirty (30) days for members of the public to submit written comments to DOE. DOE shall consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

X. Communications

1001. Communications or notices to be given by Anchor to the DOE shall be given by certified or registered mail, return receipt requested, to the following address:

Economic Regulatory Administration,
Office of Chief Counsel, RG-30,
Department of Energy Forrestal
Building, 1000 Independence Avenue
SW, Washington DC 20585

or such address as the DOE shall substitute by like notice

1002. Communications or notices to be given by the DOE to Anchor shall be

given in like manner to the following address:

President, Anchor Gasoline Corporation,
114 East Fifth Street, Tulsa, Oklahoma
74103.

or such address as Anchor shall substitute by like notice.

I, the undersigned, a duly authorized representative of Anchor Gasoline Corporation (Anchor) hereby agree to and accept on behalf of Anchor the foregoing Consent Order.

C.C. McKee,

President, Anchor Gasoline Corporation.

Date: May 24, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of DOE the foregoing Consent Order.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory
Administration.

Date: May 25, 1988.

"Adjusted Net Income" shall mean on an annual basis the firm's audited net income or net loss for each fiscal year period determined in accordance with Generally Accepted Accounting Principles, applied on a consistent basis, and adjusted to include or exclude the following items:

(i) Exclude Depreciation, Depletion and Amortization as reported for such period, including economic limit write-down or impairment of oil and gas properties;

(ii) Exclude all non-cash items of income and expense; however, such amounts shall be included in subsequent years to the extent such amounts are received or disbursed in the form of cash;

(iii) Exclude as an expenditure the incurrence or retirement of indebtedness; but include as an expenditure retirement of indebtedness to DOE under the terms of paragraph 402(a), and \$203,570 in each of the four years that Adjusted Net Income is computed to reflect the retirement of indebtedness to DOE under the terms of paragraph 403(b);

(iv) Exclude as an expenditure capital expenditures required to operate in an efficient manner but limited in amount to \$2.0 million on a cumulative basis during the term of this Consent Order, except that any expenditures made when and as necessary to meet the requirements of any Federal, State or other regulatory agency for environmental, health or safety reasons in excess of \$1,000,000 on a cumulative basis during the term of this Consent Order are also included;

(v) Exclude gain or loss applicable to all sales or other transfers of property plant and equipment, but include cash

receipts and cash values received from all sales or other Transfers of property, plant and equipment which are not subject to the Participation Payments in Sales or Other Transfers of Assets pursuant to paragraph 403(f) of the Consent Order. The aggregate total for inclusion in all years that Adjusted Net Income is computed shall not exceed \$1.25 million, and any portion thereof shall be included in the year in which received except that any such cash receipts and cash values received during the period from the effective date of this Consent Order until April 30, 1989, not to exceed \$1.25 million, shall be included as income in Anchor's fiscal year 1990; and

(vi) Exclude General and Administrative (G&A) expenses exceeding \$1.54 million in 1990, and \$1.6 million per annum for each year subsequent to 1990; G&A expenses include (but are not limited to) all office and director salaries and expenses, and management, advisory, legal, accounting or other similar fees.

Nothing herein shall be construed as permitting a deduction for distributions (including, but not limited to, dividends and bonuses) to the Officers, Directors or Shareholders, which distributions are hereby specifically defined as non-deductible. This restriction, however, does not apply to contributions to Anchor's IRS qualified retirement plan that is in compliance with ERISA, and expenditures for salaries and expenses, and management, advisory, legal, accounting or other similar fees to the extent permitted in paragraph (vi) above.

Exhibit B

"Indebtedness" shall mean any liabilities (excluding accounts payable, other than for crude oil trading not related to Anchor's feedstock needs, and other normal operating and accrued expenses consistent with historical accounting and business practices), both existing and incurred during the term of the Consent Order.

Exhibit C

"Determination of Adjusted Net Income Assuming Future Business Combination" The terms of this Consent Order, including Exhibits A and B, shall apply to Anchor's successor entity in any Business Combination, but only to that portion of the Business Combination contributed by Anchor. A Business Combination shall mean and include a merger consolidation or similar transaction in which Anchor is a party. Any intracompany or interaffiliate transactions that occur

between that portion of the Business Combination attributable to Anchor and Anchor's successor entity must be at arm's-length and at fair market value.

Exhibit D

In the United States District Court for the Northern District of Oklahoma.

[Civil Action No. 87-C-294-E]

Canal Refining Company, Plaintiff, v. United States Department of Energy, et al., Defendants.

Joint Motion To Expunge the Magistrate's Report and Recommendation Regarding Summary Judgment and Order

Plaintiff Canal Refining Company and defendants the U.S. Department of Energy and John S. Herrington, as Secretary of Energy, hereby jointly move that the Magistrate's Report and Recommendation filed April 27, 1988 ("Recommendation"), which has not been acted on by the Court herein, be expunged from the record of the above-captioned action, on the grounds that the action has been fully settled and that the Recommendation may be misused and misapplied by others in administrative forums and elsewhere, and for other equitable reasons. Such expungement is appropriately exercised within the equitable powers of the United States District Courts.

Respectfully submitted,

David G. Wilson,

Andrews & Kurth, 1730 Pennsylvania Ave. NW., Washington, DC 20006. Tel.: (202) 662-2700.

John M. Imel,

Moyers, Martin, Santee Imel & Tetrick, 320 South Boston Building, Tulsa, Oklahoma 74103.

Attorneys for Plaintiff.

Don W. Crockett,

Jeffrey R. Whieldon,

Marc Kasischke,

Judicial Litigation Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Tel.: FTS 896-8335; (202) 586-8335.

Nancy Nesbitt Blevins,

Assistant United States Attorney, 3600 United States Courthouse, Tulsa, Oklahoma 74103.

Attorneys for Defendants.

The parties having moved that the Magistrate's Report and Recommendation filed April 27, 1988, be expunged from the record, and good cause appearing therefor, it is on this

day of _____, 1988,

So ordered, and it is

Further ordered that the clerk of the Court is directed to remove and expunge the subject report from the record herein.

United States District Judge

In the United States District Court for the Northern District of Oklahoma.

[Civil Action No. 87-C-145-E]

United States of America, Plaintiff, v. Canal Refining Company, et al., Defendants. [Civil Action No. 87-C-294-E]

Canal Refining Company, Plaintiff, v. United States Department of Energy, et al., Defendants.

Stipulation of Dismissal and Order

The United States of America, the United States Department of Energy, Canal Refining Company and Anchor Gasoline Corporation hereby stipulate that the above-captioned civil actions have been fully settled by way of a Consent Order between the parties, which has become a final order of the Department of Energy and which, *inter alia*, requires that the parties stipulate to the dismissal of the above-captioned actions with prejudice. Accordingly, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the parties hereby stipulate that the complaints in both of the above-captioned civil actions should be dismissed with prejudice.

Executed this _____ day of _____, 1988.

David G. Wilson,

Andrews & Kurth, 1730 Pennsylvania Ave. NW., Washington, DC 20006. Tel.: (202) 662-2700.

John M. Imel,

Moyers, Martin, Santee Imel & Tetrick, 320 South Boston Building, Tulsa, Oklahoma 74103.

Attorneys for Canal Refining Company and Anchor Gasoline Corporation

Don W. Crockett,

Jeffrey R. Whieldon,

Marc Kasischke,

Judicial Litigation Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Tel.: FTS 896-8335; (202) 586-8335.

Nancy Nesbitt Blevins,

Assistant United States Attorney, 3600 United States Courthouse, Tulsa, Oklahoma 74103.

Attorneys for the United States of America and the United States Department of Energy

The parties in the above-captioned civil actions having fully settled all matters between them and good cause appearing therefor, it is, on this day of _____, 1988, so ordered.

United States District Judge

[FR Doc. 88-13682 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Enron Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Proposed Consent Order with Enron Corporation.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Enron Corporation (Enron). This Consent Order would resolve Enron's potential liability for DOE regulatory violations based on an audit which tentatively concluded that Enron had overcharges in resales of natural gas liquids (NGLs), and in sales, and in resales, of natural gas liquid products (NGLPs) during the period August 19, 1973 through October 31, 1978. Enron has disputed ERA's audit findings and denies any overcharge liability. No litigation had been initiated against Enron.

If this Consent Order is approved, Enron will pay \$48 million, plus interest from the date the Consent Order was executed until paid, to the DOE. ERA will then petition the DOE Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V, where any person who claims to have suffered injury from Enron's alleged overcharges would have the opportunity to submit a claim. Pursuant to 10 CFR 205.199, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Consent Order, or renegotiate the agreement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Copies of the Consent Order may be received free of charge by writing to the address above, or may be obtained at the Freedom of Information Reading Room, Forrestal Building, 1000

Independence Avenue SW., Room 1E-190, Washington, DC.

SUPPLEMENTARY INFORMATION:

Resolution of Regulatory Issues

During the period of price controls, August 19, 1973 through January 27, 1981, Enron was a reseller and/or processor of petroleum products and subject to the audit jurisdiction of ERA to determine compliance with the Federal petroleum price and allocation regulations. During the period covered by the proposed Consent Order (August 19, 1973 through January 27, 1981), Enron engaged in, among other things, the resale of natural gas liquids (NGLs) and natural gas liquid products (NGLPs).

ERA conducted an audit of Enron's NGL and NGLP sales transactions, and as a result of this audit, disputes arose between ERA and Enron concerning Enron's compliance with the Federal price and allocation regulations which pertained to sales of NGLPs and to resales of NGLs and NGLPs during the period. As a result of this audit, ERA issued a Proposed Remedial Order (PRO) to Enron, alleging violations in the amount of approximately \$62 million. Prior to the initiation of litigation by publication of notice in the **Federal Register**, Enron submitted additional factual data to ERA regarding its pricing of NGL's and NGLP's.

The major regulatory areas of disputes between ERA and Enron concerned reallocation of costs permitted under the regulations, the proper computation of the May 15, 1973 weighted average sales price for one of its propane classes of purchaser, and the applicability of 10 CFR, Subpart K, to a portion of Enron's sales of NGL's and NGLP's. Other areas of dispute included, the propriety of the class of purchaser structure created by Enron for resales made to new customers after May 15, 1973, the application of the "new market" regulation (10 CFR 212.111) to a resale to a new customer after May 15, 1973.

For the issues involving the resale of NGLs or NGLPs covered by this proposed settlement, following extensive discussions with Enron and the exchange of documentation after the PRO was issued, ERA calculated the maximum refund amount to be approximately \$31 million, plus an additional \$62 million in interest, which could be assessed on that amount for a total of \$93 million. In addition, ERA determined that Enron may be liable for a maximum of \$5 million in overcharges for sales of Enron-processed NGLPs, plus an additional \$10 million in interest which could be assessed on that amount for a total of approximately \$15 million.

Enron's total potential liability, therefore, is believed by ERA to be \$36 million in overcharges plus \$67 million in interest on that amount. Further, ERA would amend the PRO which was issued to Enron to reflect this calculation if the proposed Consent Order is not made final.

The settlement calls for Enron to pay \$48 million (plus interest from the date of execution of the Consent Order by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding for disposition of these funds pursuant to 10 CFR Part 205, Subpart V. ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, and after assessing the litigation risks associated with establishing the alleged overcharges.

Bases For Settlement

As discussed above, following ERA's advice of its audit findings and calculated overcharges, Enron supplied information to support its contention that the specific resales properly included in its computation of the May 15, 1973 weighted average sales price for one of its propane classes of purchaser a particular transaction which occurred prior to that date. More importantly, Enron supplied contemporaneous documentation demonstrating cost reallocations between product categories throughout the audit period. The PRO would necessarily have to be amended to reflect some of these cost reallocations and is, in part, the basis for the initial reduction in principal violation from \$62 million to \$31 million. Moreover, if Enron were to ultimately prevail on the remaining cost reallocation issues, the potential liability of Enron would be reduced even more significantly. Also, for settlement consideration, Enron supplied information in support of its position that the new customer to which a resale was first made in 1974, qualified as a resale to a new market under the regulations. Finally, ERA considered the effect of the court decision in *Internorth, Inc. v. DOE*, 548 F. Supp. 987 (1982) would have on ERA's application of Subpart K to a portion of Enron's sales of NGL's and NGLP's.

Based on the additional information which was provided by Enron, ERA has reevaluated its bases for the initial dispute as well as the likelihood of ultimate recovery on these issues. Furthermore, ERA has assessed the

litigation risks in prevailing on every element of each issue, including the interest component and the fact that the matters in issue are only in the initial stages of case development and litigation has not yet ensued. As a result of these considerations, ERA has preliminarily determined that a \$48 million settlement on those issues is reasonable and in the public interest.

Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Enron will pay the principal amount of approximately \$48 million, plus interest, to DOE. If the settlement is not made final on or before the one hundred twentieth day following execution by Enron, Enron may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Enron maintain information on its sales during the period price controls, and provide it to OHA upon request.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All comments received by the thirtieth (30th) day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modification of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, June 2, 1988.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement
Litigation, Economic Regulatory
Administration.

[Case No. 730V00221]

Consent Order

I. Introduction

101. This Consent Order is entered into between Enron Corp. ("Enron") and the United States Department of Energy ("DOE"). This Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Enron, as hereinafter defined, relating to Enron's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973 through January 27, 1981 (hereinafter "the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order.")

II. Jurisdiction, Regulatory Authority, and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199j.

202. The Economic Regulatory Administration ("ERA") was created by section 26 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204-4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. The following definitions apply for purposes of this Consent Order:

A. "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil and refined petroleum products, including the entitlements and mandatory oil imports programs administered by the DOE. The federal petroleum price and allocations

regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocations Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212 and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals decisions, orders, notices, forms and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199j and the definitions under the federal petroleum price and allocations regulations shall apply to this Consent Order, except to the extent inconsistent herewith.

B. "DOE" includes not only the Department of Energy, but also the Cost of Living Council, the Federal Energy Office, and Federal Energy Administration, the Department of Energy, ERA, the Office of Special Counsel ("OSC") and all predecessor and successor agencies.

C. "Enron" includes (without limitation) Enron Corp. and all of its subsidiaries, affiliates (including the acts of such companies before they were subsidiaries or affiliates), prior subsidiaries, predecessors, successors in interest, and their petroleum-related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and except for paragraph 401, infra, officers, directors and employees of Enron.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by the Consent Order, Enron was a "refiner," "reseller," "retailer," "gas plant operator" and "gas plant owner" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Enron engaged in, among other things, the sale, refining and processing of natural gas liquids and natural gas liquid products.

302. The DOE conducted an audit of Enron's compliance with the federal petroleum price and allocation regulations for the period covered by this Consent Order. As part of its audit, the DOE examined Enron's books and records relating to Enron's compliance with the federal petroleum price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Enron prepared and submitted to the auditors a substantial number of specific

responses to audit inquiries not necessarily limited to, or readily available from, individual books or records. The DOE has found no evidence that Enron has committed any willful or intentional violations of the federal petroleum price and allocations regulations.

303. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Enron's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Enron, including the issuance of a Proposed Remedial Order. Enron maintains, however, that it has calculated its costs, determined its prices, sold its petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Enron disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Enron's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Enron has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might have been sought by the DOE against Enron for such matters under 10 CFR 205.199i or otherwise, Enron shall pay a total of exactly Forty-Eight Million Dollars (\$48,000,000) to the DOE within thirty (30) days of the effective date of the Consent Order. Payment shall be by wire transfer, pursuant to directions provided to Enron by the DOE.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes

of action or other proceedings by the DOE regarding Enron's compliance with all federal petroleum price and allocation regulations for the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Enron by this Consent Order.

502(a). Except as otherwise provided herein, compliance by Enron with this Consent Order shall be deemed by the DOE to constitute full compliance for all civil and administrative purposes with all federal petroleum price and allocation regulations for the matters covered by this Consent Order. In consideration of Enron's performance as required under this Consent Order, the DOE hereby releases Enron completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against Enron for alleged violation of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Enron or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or any successor directly or indirectly aid in the initiation of any such administrative or civil matter against Enron or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or judicial proceeding that Enron has violated the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order or otherwise take any action with respect to Enron in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

502(b). The DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based on the information and evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in

combination with information or evidence presently known to the DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regards to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal action, or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970, or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Enron in any private action, including an action for contribution by or against Enron.

502(c). With respect to the matters covered by this Consent Order, Enron releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Enron has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not cover or affect Enron's rights in all regards concerning claims under 10 CFR Part 205, Subpart V or its claims arising from alleged violations or settlements of alleged violations of federal petroleum price and allocation regulations by third parties. This release, moreover, does not preclude Enron from asserting any factual or legal position or argument as a defense against any action, claim or proceeding brought by the DOE, the United States, or any agency of the United States.

503. Execution of this Consent Order constitutes neither an admission by Enron nor a finding by the DOE of any violation by Enron of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. The payment made by Enron pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, or forfeiture or as a payment in lieu of penalties, fines or forfeitures.

504. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Enron but only if Enron

has concealed facts relating to such violations. The DOE also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Enron shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist the DOE in the distribution of the funds paid pursuant to his Consent Order, Enron also shall maintain, until thirty (30) days after the DOE's final distribution of these funds, sales volume data and customers' names and addresses regarding its sales of refined petroleum products for the transactions covered by this Consent Order. If requested, Enron shall make such information available to the DOE. Except as otherwise provided in this paragraph, upon payment to the DOE of the amount set forth in paragraph 401 of this Consent Order, Enron is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to matters covered by this Consent Order.

602. Except for formal request for information regarding other firms subject to the DOE's information gathering and reporting authority, Enron will not be subject to any audit requests, report order, subpoenas, or other administrative discovery by the DOE regarding the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Enron or obtained by the DOE in its audit of Enron as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege of exemption reasonably available to it. The DOE will provide Enron with ten (10) days' actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Enron's compliance with the federal petroleum price and allocation regulations in accordance with DOE's established records retention procedures.

Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Enron may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Enron and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Enron (and its successors and assigns) and the DOE each reserve the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Enron agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of the DOE having the same force and effect as, a remedial order issued pursuant to, section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Enron hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final Order of the DOE upon notice to the effort being published in the Federal Register. Prior to that date, the DOE will publish notice in the Federal Register that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as final Order, to

withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Enron in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Enron, Enron may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Enron Corp., hereby agree to and accept the foregoing Consent Order on behalf of Enron Corp.
Kenneth L. Lay,

Dated: April 28, 1988.

I, the undersigned, a duly authorized representative of the Department of Energy, hereby agree to and accept the foregoing Consent Order on its behalf.
Milton C. Lorenz,
Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration, United States Department of Energy.

Dated: May 12, 1988.

[FR Doc. 88-13683 Filed 6-16-88, 8:45 am]
BILLING CODE 6450-01-M

Final Consent Order With Meadows Realty Co. (Formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) hereby gives notice required by 10 CFR 205.199j that it has adopted as final the Consent Order with Meadows Realty Company (formerly San Joaquin Oil Co.) and San Joaquin Refining Co., Inc. (collectively San Joaquin) executed on April 22, 1988, and published for comment in 53 FR 15441 on April 29, 1988.

As required by 10 CFR 205.199j, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT:
Ann C. Grover, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4387.

Copies of the Consent Order may be obtained free of charge by written request to "San Joaquin Consent Order Request" at the above address or by calling Ann C. Grover at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On April 29, 1988, DOE published notice in the Federal Register, Vol. 53 at page 15441, announcing the execution of a Proposed Consent Order between San Joaquin and DOE. In compliance with the DOE regulations, that Notice, and a Press Release issued on May 13, 1988, summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of San Joaquin's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) concluded that San Joaquin had overcharged its customers for refined petroleum products during the period September 1973 through January 1981. San Joaquin disputed ERA's audit findings and further sought exception relief from the application of the regulations. These matters are presently pending before DOE's Office of Hearings and Appeals.

The Consent Order resolves these matters and all other civil and administrative claims or causes of action regarding San Joaquin's compliance with an obligation under the Federal petroleum price and allocation regulations. As consideration, San Joaquin has agreed to pay \$1.25 million, plus interest from January 1, 1988. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by San Joaquin pursuant to the Consent Order.

As noted, no comments were received in response to the Notice of Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199j. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on June 6, 1988.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement
Litigation, Economic Regulatory
Administration.

[FR Doc. 88-13684 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-06-NG]

**Midcon Sales, Inc.; Order Granting
Blanket Authorization To Import
Natural Gas; Correction**

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Correction.

SUMMARY: The Federal Register notice of the Order issued in this docket published May 27, 1988, 53 FR 19326, incorrectly stated the total amount of natural gas to be authorized over a two-year period. The Federal Register notice should be changed to read: The order issued in ERA Docket 88-06-NG authorizes MidCon Sales Inc. to import up to 400 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

Issued in Washington, DC, June 6, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-13686 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-26-NG]

**Portland General Electric Co.;
Application to Import Natural Gas from
Canada**

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Notice to application for
blanket authorization to import natural
gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 26, 1988, of an application filed by Portland General Electric Company (Portland) for blanket authorization to import up to 120,000 Mcf per day and a maximum of 40 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and

written comments are to be filed no later than July 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Natural Gas Division,
Economic Regulatory Administration,
Department of Energy, Forrestal
Building, Room GA-076, 1000
Independence Avenue, SW.,
Washington, DC 20585, (202) 586-1657
Diane Stubbs, Natural Gas and Mineral
Leasing, Office for General Counsel,
U.S. Department of Energy, Forrestal
Building, Room 6E-042, 1000
Independence Avenue, SW.,
Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: Portland, a subsidiary of Portland General Corporation, is an electric utility with its principal place of business in Portland, Oregon. Portland attached to its application a proposed contract with Westcoast Transmission Company Limited (Westcoast), but Portland indicates that it contemplates purchasing gas from a variety of Canadian suppliers other than Westcoast. Natural gas imported pursuant to the requested authorization would be used at Portland's Beaver generating facility, although some might be resold to correct imbalances. Portland states that it intends to use existing pipeline facilities for the transportation of the requested imports, and proposes to inform the ERA within two weeks of the first delivery of natural gas imported pursuant to the requested authorization and to thereafter submit quarterly reports giving details of individual transactions.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may simply designate a total amount of authorized volumes for the term rather than also imposing a daily limit, in order to provide the applicant with maximum flexibility.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene

or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., July 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application

and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Portland's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 9, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-13681 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-32-NG]

**Tarpon Gas Marketing Ltd.;
Application To Import Natural Gas
From Canada**

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Notice of application for
blanket authorization to import natural
gas.

SUMMARY: The Economic Regulatory
Administration (ERA) of the Department
of Energy (DOE) gives notice of receipt
on April 8, 1988, of an application filed
by Tarpon Gas Marketing Ltd. (TGM)
for blanket authorization to import up to
500 Bcf of Canadian natural gas for a
term of two years beginning on the date
of ERA approval. TGM proposes to
import the gas for sales to a wide range
of markets in the United States,
including pipelines, local distribution
companies, commercial and industrial
end-users.

The application is filed with the ERA
pursuant to section 3 of the Natural Gas
Act and DOE Delegation Order No.
0204-111. Protests, motions to intervene,
notices of intervention and written
comments are invited.

DATE: Protests, motions to intervene or
notices of intervention, as applicable,
requests for additional procedures and
written comments are to be filed no later
than July 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Laraine Moore, Natural Gas Division,
Economic Regulatory Administration,
U.S. Department of Energy, Forrestal
Building, Room GA-076, 1000
Independence Avenue, SW,
Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral
Leasing, Office of General Counsel,
U.S. Department of Energy, Forrestal
Building, Room 6E-042, 1000
Independence Avenue, SW,
Washington, DC, 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: TGM is a
Canadian corporation with its principal
place of business in Calgary, Alberta.
No contracts have been executed and
therefore the application does not
identify the suppliers, buyers, or prices;
however, TGM asserts that the specific
terms of each import and sale would be
based on competition in the
marketplace. TGM intends to utilize
existing pipeline facilities for
transportation of the volumes imported.

The decision on this application will
be made consistent with the DOE's gas
import policy guidelines, under which
the competitiveness of an import
arrangement in the markets served is the
primary consideration in determining
whether it is in the public interest (49 FR
6684, February 22, 1984). Parties that
may oppose this application should
comment in their response on the issue
competitiveness as set forth in the
policy guidelines. The applicant asserts
that this import arrangement is
competitive. Parties opposing the
arrangement bear the burden of
overcoming this assertion.

Further, if the ERA approves this
requested blanket import, it may permit
the import of the gas beginning on the
date of first delivery at any existing
point of entry and through any existing
transmission system. ERA will also
condition the authorization on the filing
of quarterly reports to facilitate ERA
monitoring of the operation and
effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person
may file a protest, motion to intervene
or notice of intervention, as applicable,
and written comments. Any person
wishing to become a party to the
proceeding and to have the written
comments considered as the basis for
any decision of the application must,
however, file a motion to intervene or
notice of intervention, as applicable.
The filing of a protest with respect to
this application will not serve to make
the protestant a party to the proceeding,
although protests and comments
received from persons who are not
parties will be considered in
determining the appropriate action to be
taken on the application. All protests,
motions to intervene, notices of
intervention, and written comments
must meet the requirements that are
specified by the regulations in 10 CFR
Part 590.

Protests, motions to intervene, notices
of intervention, requests for additional
procedures, and written comments
should be filed with the Natural Gas
Division, Office of Fuels Programs,
Economic Regulatory Administration,

Room GA-076, RG-23, Forrestal
Building, 1000 Independence Avenue,
SW, Washington, DC 20585, (202) 586-
9478. They must be filed no later than
4:30 p.m. e.d.t., July 18, 1988.

The Administrator intends to develop
a decisional record on the application
through responses to this notice by
parties, including the parties' written
comments and replies thereto.
Additional procedures will be used as
necessary to achieve a complete
understanding of the facts and issues. A
party seeking intervention may request
that additional procedures be provided,
such as additional written comments, an
oral presentation, a conference, or trial-
type hearing. Any request to file
additional written comments should
explain why they are necessary. Any
request for an oral presentation should
identify the substantial question of fact,
law, or policy at issue, show that it is
material and relevant to a decision in
the proceeding, and demonstrate why an
oral presentation is needed. Any request
for a conference should demonstrate
why the conference would materially
advance the proceeding. Any request for
a trial-type hearing must show that there
are factual issues genuinely in dispute
that are relevant and material to a
decision and that a trial-type hearing is
necessary for a full and true disclosure
of the facts.

If an additional procedure is
scheduled, the ERA will provide notice
to all parties. If no party requests
additional procedures, a final opinion
and order may be issued based on the
official record, including the application
and responses filed by parties pursuant
to this notice, in accordance with 10
CFR 590.316.

A copy of TGM's application is
available for inspection and copying in
the Natural Gas Division Docket Room,
GA-076 at the above address. The
docket room is open between the hours
of 8:00 a.m. and 4:30 p.m., Monday
through Friday, except Federal holidays.

Issued in Washington, DC, June 6, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-13687 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-30-NG]

**Union Gas Limited; Application To
Export and Import Natural Gas to and
From Canada**

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Notice of application for blanket authorization to export and import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on May 9, 1988, of an application filed by Union Gas Limited (Union) requesting blanket authorization to export and to import for export back to Canada up to a total of 350 Bcf of natural gas on a short-term and spot basis over a two-year term beginning with the date of the first export or import. Sales of Canadian gas will not be made in the U.S.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than July 18, 1988.

FOR FURTHER INFORMATION CONTACT:
John Boyd, Natural Gas Division,
Economic Regulatory Administration,
U.S. Department of Energy, Forrestal
Building, Room GA-076, 1000
Independence Avenue, SW.,
Washington, DC 20585, (202) 586-4523
Diane Stubbs, Natural Gas and Mineral
Leasing, Office of General Counsel,
U.S. Department of Energy, Forrestal
Building, Room 6E-042, 1000
Independence Avenue, SW.,
Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: Union, a Canadian corporation with its principal place at Chatham, Ontario, Canada, is a local gas distribution company, engaged in the transmission, storage, and distribution of gas. The requested authorization will permit Union to export volumes of U.S. produced natural gas, purchased from U.S. producers or other suppliers on a short-term basis, for resale to its system supply customers in Canada. Union also proposes to import volumes of Canadian natural gas for transportation through the U.S. and export back into Canada for use as system supply. The applicant requests that it be permitted to import and export natural gas for its own account, as well as for the accounts of its suppliers. As noted above, Union does not propose to sell Canadian gas in the U.S.

The terms of each arrangement would be negotiated in response to market conditions. Union intends to use existing

transmission systems and will not require the construction of new or separate facilities in order to export or import the natural gas. Union also intends to comply with ERA's reporting requirements.

This application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether the proposed arrangement is in the public interest will be based upon matters deemed to be appropriate by the Administrator, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace, and with respect to exports of U.S.-produced gas, the domestic need for the gas. The applicant asserts that current excess gas supplies evidence a lack of need for this gas to serve regional and national markets. The applicant further asserts that this export arrangement would promote competition and have a beneficial impact on the balance of trade. In addition, Union asserts the import aspect of its proposal will reduce per-unit transportation costs on affected U.S. pipelines. Parties opposing the arrangement should comment in any response on these matters.

Union requests that an authorization be granted on an expedited basis. An ERA decision on Union's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional

procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t. July 18, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the Official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Union's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 9, 1988.
Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.
[FR Doc. 88-13753 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-10-NG]**Woodward Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada****AGENCY:** Economic Regulatory Administration, DOE.**ACTION:** Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Woodward Marketing, Inc. (Woodward), blanket authorization to import natural gas from and export natural gas to Canada. The order issued in ERA Docket No. 88-10-NG authorizes Woodward to import up to 100 Bcf of Canadian natural gas and to export to Canada up to 100 Bcf of domestic natural gas over a two-year period, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

(202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 6, 1988.
Constance L. Buckley,

*Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.*

[FR Doc. 88-13688 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 88-13; Certification Notice—18]**Filing of Certification of Compliance; Coal Capability of New Electric Powerplants Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act****AGENCY:** Economic Regulatory Administration, DOE.**ACTION:** Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load

powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the *Federal Register* a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Gas Alternative Systems, Inc., New York, NY	5-27-88	Cogeneration Combined Cycle.	80	Syracuse, NY

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered, the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC, on June 10, 1988.
Constance L. Buckley,
*Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.*
[FR Doc. 88-13754 Filed 6-16-88; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration**Agency Information Collections Under Review by the Office of Management and Budget****AGENCY:** Energy Information Administration; DOE.**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of

Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total

annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before July 18, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Carole Patton, Office of Statistical Standards (EI-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so

as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The energy information collection submitted to OMB for review was:

1. Energy Information administration.
2. EIA-14, 182, 782A/B/C, 821, 856, 863.

3. 1905-0174.

4. Petroleum Marketing Program.

5. Revision—The purpose of this request is to propose minor revisions in the EIA-856 and request an extension of OMB approval through September 30, 1990. (The other forms in the Petroleum Marketing Program are currently approved through September 30, 1990.) There are 57 respondents to the monthly EIA-856. The average burden hours per response is 6.29 hours, and the total annual burden is 4,302 hours.

6. Monthly, Annually, and Triennially.

7. Mandatory.

8. Businesses or other for profit.

9. 20,016 respondents annually.

10. 58,197 responses annually.

11. 2.7 hours per response (average).

12. 156,908 hours annually.

13. The Petroleum Marketing Program surveys collect information on costs, sales, prices and distribution for crude oil and petroleum products. Data are published in the petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, and distributors and importers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, June 13, 1988.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-13690 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time:

Saturday, July 16, 1988, 8:30 am—6:00 pm

Sunday, July 17, 1988, 8:30 am—4:00 pm

Place: Snowmass Conference Center, Sinclair/Carroll Rooms, Snowmass Village, Colorado 81615.

Contact: Dr. P.K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20545. Telephone: (301) 353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Saturday, July 16, 1988

- Discussion of FY 1989 Budget for National Science Foundation Elementary Particle Physics
- Discussion of FY 1989 Budget for Department of Energy High Energy Physics
- Status Report on First Operation of the SLAC Linear Collider (SLC) at Stanford Linear Accelerator Center
- Status Reports on the Superconducting Super Collider (SSC)
- Presentation and Discussion of the Report of the Subpanel on Future Modes of Experimental Research in High Energy Physics
- Presentation and Discussion of the Report of the Subpanel on High Energy Gamma Ray and Neutrino Astronomy
- Reports of HEPAP Information Subgroups
- Discussion of HEPAP on Foregoing Items

Sunday, July 17, 1988

- General Discussion of HEPAP on Foregoing Items
- Discussion on Transmittal of the Report of the Subpanel on Future Modes of Experimental Research in High Energy Physics
- Discussion on Transmittal of the Report of the Subpanel on High Energy Gamma Ray and Neutrino Astronomy
- Panel Discussions on European High Energy Physics
- Report of the HEPNET (High Energy Physics Network) Review Committee
- Further Discussion of Foregoing Items.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading

Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 10, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88-13685 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EC88-21-000, et al.]

Kansas Gas and Electric Co. et al; Electric Rate Small Power Production, and Interlocking Directorate Filings

June 13, 1988.

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric Company

[Docket No. EC88-21-000]

Take notice that on June 6, 1988, Kansas Gas and Electric Company (Applicant) tendered for filing its application with the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act, seeking an order (1) authorizing it to purchase, acquire, and take securities of other public utilities, (2) modifying the reporting requirement of 18 CFR 33.8 to require only an annual report, and (3) waving the Exhibit D filing requirements in part. Purchases of utility securities will be part of a passive investment program and are not designed to obtain or exercise control over any utility.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Yankee Nuclear Power Corporation

[Docket No. EL87-22-003]

Take notice that on May 23, 1988, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing in compliance with the Commission's Opinion and Order No. 285-A issued on May 6, 1988 the Amendments No. 5 and No. 6 between Vermont Yankee and its customers, Central Maine Power Company and Western Massachusetts Electric Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

Yankee Atomic Electric Company

[Docket No. EL87-21-003]

Take notice that on May 23, 1988, Yankee Atomic Electric Company tendered for filing in compliance with the Commission's Opinion and Order No. 285-A issued on May 6, 1988 the Amendment No. 4 between Yankee Atomic Electric Company and its customer, Connecticut Light and Power Company.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Company of New Mexico

[Docket No. ER88-376-000]

Take notice that on May 20, 1988, Public Service Company of New Mexico (PNM) tendered for filing a supplement to its filing in the above docket. This supplement set forth the maximum rate for economy energy sales by PNM to Texas-New Mexico Power Company (TNP) under Section J.4.1.1. of Service Schedule J to the PNM-TNP Interconnection Agreement.

Copies of this filing have been served upon TNP and the New Mexico Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER86-368-017]

Take notice that on June 1, 1988, El Paso Electric Company tendered for filing in compliance with the Commission's Order Granting Rehearing of May 2, 1988, revised sheets 3, 4 and 4a to be substituted for pages 3 and 4 in the Settlement Agreement between El Paso Electric Company and Texas-New Mexico Power Company. The revised sheets delete Sections 4.2 and 4.3 of the Settlement Agreement currently on file and add a new section 4.4.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Tapoco, Inc.

[Docket No. ER82-774-005]

Take notice that on May 19, 1988, Tapoco, Inc. tendered for filing a compliance report pursuant to Ordering Paragraph B of Opinion No. 277, 39 FERC ¶ 61,363 (1987). Ordering Paragraph B directed Tapoco to file revisions to the Exchange Agreement Between Tennessee Valley Authority and Tapoco, Inc., namely, that Tapoco delete a provision giving the TVA a right of first refusal to purchase Tapoco's facilities. Tapoco states that the right of first refusal was deleted in the

Amendatory Agreement Between Tennessee Valley Authority and Tapoco, Inc. and was dated January 1, 1988. The Commission accepted the Amendatory Agreement for filing without suspension on January 13, 1988, Docket No. ER88-192-000 and terminated the docket on March 11, 1988. Tapoco states that it has already complied with Ordering Paragraph B of Opinion No. 277.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Nantahala Power and Light Company

[Docket No. ER82-774-006]

Take notice that on May 23, 1988, Nantahala Power and Light Company (Nantahala Power) tendered for filing a comparative study of Nantahala Power and Light Company's cost of purchased power from the Tennessee Valley Authority under its current interconnection agreement with TVA and what its cost of purchased power from TVA would have been under its prior agreements with TVA, as modified. In compliance with Commission Orders Nos. 277 and 277A Nantahala's filing includes price information from January, 1983, when the new interconnection agreement was allowed to go into effect, subject to refund, until April, 1988.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket No. ER84-571-005]

Take notice that on May 31, 1988, Utah Power & Light Company (Utah) tendered for filing in accordance with the terms and conditions of the Partial Settlement Agreement (PSA) settlement interim rates effective July 1, 1987. Utah states that the affected customers have been billed pursuant to those rates since July 1, 1987 and therefore no refunds are due to any customers and no compliance report is needed.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Black Hills Power and Light Company an assumed business name of Black Hills Corporation

[Docket No. ER88-222-000]

Take notice that on May 16, 1988, Black Hills Power and Light Company an assumed business name of Black Hills Corporation (Black Hills) tendered for filing a second amendment to the filing in the above docket, filed February 1, 1988, as amended by the first amended tendered for filing on February 22, 1988, pertaining to the Restated

Electric Power and Energy Supply and Transmission Agreement, dated as of December 21, 1987 (New Agreement) between Black Hills and the City of Gillette, Wyoming (Gillette) in replacement of and to supersede the Electric Power and Energy Supply and Transmission Agreement, dated August 6, 1985 between Black Hills and Gillette filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 29 and Supplement No. 1 to Rate Schedule FERC No. 29. The filing also included the filing of the Second Amendment to Coal Supply Agreement (Coal Amendment), dated November 2, 1987 as an amendment to Black Hills Power and Light Company Supplement No. 2, Rate Schedule FERC No. 27 (as now designated).

The New Agreement provides for changes in the quantity of power and energy to be sold Gillette, for a phased in increase and energy charge therefor and other minor changes and further provides for an increase in transmission charges to Gillette. The second amendment modifies the fuel adjustment clause included in the New Agreement and complies with formal disclosures required by a Commission deficiency letter dated April 18, 1988.

Black Hills requests waiver of the Commission's notice requirements to permit the New Agreement to become effective December 21, 1987, the date of the New Agreement, and to permit the Coal Amendment to become effective November 2, 1987, the date of the Coal Amendment.

Copies of this amended filing were served upon the parties to the New Agreement, South Dakota Public Utilities Commission, the Wyoming Public Service Commission and the Montana Public Service Commission.

Comment date: June 20, 1988, in accordance with Standard Paragraph E at the end of this notice.

10. Cobin A. McNeill, Jr.

[Docket No. ID-2346-000]

Take notice that on May 10, 1988, Corbin A. McNeill, Jr. tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation
Executive Vice President	Philadelphia Electric Co.
Director	Philadelphia Electric Co.
Director	Susquehanna Power Co.
Director	Susquehanna Electric Co.

Comment date: June 27, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13744 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed with the Commission

June 13, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Wildlife Mitigation Plan.

b. *Project No.:* 2628-028.

c. *Date Filed:* May 24, 1988.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* R.L. Harris.

f. *Location:* Randolph, Clay, and Jackson Counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. John E. Dorsett, Vice President,
Alabama Power Company, 600 North
18th Street, Birmingham, AL 35291,
(205) 250-1380

Mr. Robert V. Maudlin, C.V. & R.V.
Maudlin, Investment Building, 1511 K
Street NW., Washington, DC 20005,
(202) 628-8777.

¹ This notice does not provide for consolidation for hearing of the severe matters covered herein.

i. *FERC Contact:* Mr. Patrick Murphy, (202) 376-9640.

j. *Comment Date:* July 13, 1988.

k. *Description of Project:* To comply with article 63 of the license, Alabama Power Company (licensee) proposes to manage 21,979.5 acres of land for the benefit of wildlife. These lands would include 5,900 acres currently within the project boundary; 779.5 acres of additional land to be purchased within the project vicinity; and 15,300 acres of additional land to be purchased within Jackson County, AL. The 15,300-acre area is adjacent to the Alabama Department of Conservation and Natural Resources' Skyline Wildlife Management Area, and is under contract to the licensee for purchase.

1. This notice also consists of the following standard paragraphs: B, C, & D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Dean Shumway Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must

also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13709 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2737-005, et al.]

Conoco Inc. et al.; Applications for Certificates, Abandonment of Service and Amendment of Certificates¹

June 15, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 29, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2737-005 D May 26, 1988	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Williams Natural Gas Co., West Panhandle Field, Gray County, TX.	1
G-9356-001 D May 23, 1988	BHP Petroleum Co., Inc., 5847 San Felipe, Suite 3600, Houston, TX 77057.	Transcontinental Gas Pipe Line Corp., LaGloria and Falfurrias Field, Brooks and Jim Wells Counties, TX.	2
G-9357-001 D May 23, 1988	do.	Natural Gas Pipeline Co. of America, LaGloria and Falfurrias Field, Brooks and Jim Wells Counties, TX.	2
CI61-1425-009 D May 23, 1988	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	3
CI61-1425-010 D May 23, 1988	do.	El Paso Natural Gas Co., Jalmat, et al. Fields, Lea County, NM.	3
CI 68-46-000 D May 23, 1988	BHP Petroleum Co. Inc.	United Gas Pipe Line Co., Chauvin Field, Terrebonne Parish, LA.	2
CI88-464-000 (CI75-167) B May 23, 1988.	do.	United Gas Pipe Line Co., Bryceland field, Bienville Parish, LA.	2
CI88-465-000 (G-6043) B May 23, 1988.	do.	Texas Eastern Transmission Corp., Bryceland Field, Bienville Parish, LA.	2
CI88-466-000 (CI61-27) B May 23, 1988.	BHP Petroleum Co., Inc.	Texas Gas Transmission Corp., Calhoun Field, Ouachita Parish, LA.	2
CI88-467-000 (CI75-358) B May 23, 1988.	do.	United Gas Pipe Line Co., Bryceland Field, Bienville Parish, LA.	2
CI88-468-000 F May 23, 1988	Samson Resources Co., Samson Plaza, Two West Second St., Tulsa, OK 74103.	Arkla Energy Resources, a division of Arkla, Inc., S.E. Spiro and North Ashland Fields, Leflore and Pittsburg Counties, OK.	4
CI88-469-000 (CI61-1429) B May 23, 1988.	Sun Exploration and Production Co.	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	5
CI88-470-000 (CI76-194) B May 23, 1988.	Conoco Inc.	Tennessee Gas Pipeline Co., Grand Isle Block 45, Offshore LA.	6
CI88-471-000 (CI83-106-000) B May 23, 1988.	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77252	Bayou Interstate Pipeline System, Vermilion Block 251 Field, Offshore LA.	7
CI88-472-000 (CI79-378) B May 23, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Division of Enron Corp., Lips and Riley Fields, Roberts County, TX.	8

¹ Effective 6-8-86, Conoco surrendered 132 acres in the NW/4 of Section 178, block 3, I. & G. N. R.R. Survey, Gray County, Texas, to the lessor for salvage.

² Effective 6-1-87, BHP Petroleum Company Inc. assigned certain acreage to Maple Gulf Coast Properties Corporation.

³ Effective 1-2-86, Sun assigned its interest in Property No. 639882, So. Langlie Jal Unit, to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

⁴ Effective 6-1-87, Apache Corporation et al., assigned certain acreage to Samson Resources Company.

⁵ This application was noticed as a partial abandonment on 5-24-88, in Docket No. CI61-1429-019 (53 Fed. Reg. 19329). However, on 5-23-88, applicant requested a total abandonment of its sales to El Paso, as the last remaining property under the contract has been assigned to Doyle Hartman, James A. Davidson, Michael L. Klein, and John H. Hendrix Corporation.

⁶ The lease covering Grand Isle Block 45 (OCS G-1582) expired on 4-30-88.

⁷ Depletion of dedicated reserves.

⁸ Effective 6-1-86, Multistate assigned certain acreage to Carmi Exploration. By assignment executed 10-8-86, effective the date the Elrick #2-44 well was completed, Multistate assigned certain acreage to Landmark Exploration Company. Effective 9-1-87, Tenneco Oil Company (successor to Multistate) assigned certain acreage to Vita Oil Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-13745 Filed 6-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-460-000, et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP88-460-000]

June 14, 1988.

Take notice that on June 10, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-460-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for Riley Natural Gas Company, PSI, Inc., Direct Gas Supply Corporation, TXG Gas Marketing Company, CNG Trading Company, Bishop Pipeline Company and Industrial Energy Services Company

(Shippers), under CNG's blanket certificate issued in Docket No. CP86-311-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG requests authorization to transport gas for Shippers, on an interruptible basis, from various receipt points on its system to various interconnections between CNG and certain local distribution companies. CNG states that the receipt and delivery points, along with the maximum daily, average daily and annual volumes, are shown on Exhibit A to the subject filing. CNG also states that the transportation of gas for Shippers has commenced for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificates issued to CNG in Docket No. CP86-311-000. CNG states that it has reported these transactions, along with the various commencement dates, as shown on Exhibit A to the subject filing. CNG proposes to continue these services in

accordance with §§ 284.221 and 284.223 of the Commission's Regulations.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP88-437-000]

June 15, 1988.

Take notice that on June 3, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP88-437-000 pursuant to section 7(c) of the Natural Gas Act, to construct and operate certain natural gas pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Tennessee requests authority to construct and operate 87.5 miles of 30-inch pipeline and appurtenant facilities extending from the tailgate of a proposed gas treatment plant in Mobile County, Alabama to Tennessee's Station No. 534 in Forrest County, Mississippi. Tennessee asserts

that the proposed facilities would be necessary to attach natural gas to be produced in the Mobile Bay Area, Offshore Alabama. Tennessee projects an inservice date of July 1, 1991. Total cost of the proposed facilities is projected to be \$62,037,000.

Comment date: July 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Canyon Creek Compression Company

[Docket No. CP87-109-002]

June 15, 1988.

Take notice that on June 2, 1988, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP87-109-002 a petition to amend the Commission order issued August 6, 1987, in Docket No. CP87-109-000, pursuant to section 7(c) of the Natural Gas Act for authorization to extend the term of its compression of natural gas for Columbia Gas Transmission Corporation (Columbia Gas) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Canyon Creek is currently authorized to render a compression service for Columbia Gas on an interruptible basis, pursuant to an agreement dated November 6, 1986, up to a maximum of 10,000 Mcf of gas per day, via its compressor station in Uinta County, Wyoming, for a term ending August 6, 1988, or the date Canyon Creek accepts a blanket certificate pursuant to Commission Order No. 436, it is stated.

Pursuant to an amendment of the compression service agreement dated May 3, 1988, Canyon Creek states that it proposes to extend the term of the compression service until August 6, 1989, and from month to month thereafter, unless terminated by either party upon 30 days prior written notice.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Sea Rim Pipeline, Inc.

[Docket No. CP88-454-000]

June 15, 1988.

Take notice that on June 6, 1988, Texas Sea Rim Pipeline, Inc. (Texas Sea Rim), Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed in Docket No. CP88-454-000 an application pursuant to section 7(c) of the Natural Gas Act, and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Texas Sea Rim states that it intends to transport natural gas on behalf of shippers an elects to become a transporter under the terms and conditions of the Commission's Order No. 436 and Order No. 500. Texas Sea Rim states that it is willing to accept and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations, which paragraph refers to Subpart A of Part 284 of the Commission's Regulations.

Texas Sea Rim states that it has filed an Original Volume No. 2 to its FERC Gas Tariff, under which it proposes to perform transportation service under its blanket certificate and under section 311 of the Natural Gas Policy Act. Texas Sea Rim further notes that it has proposed to continue to charge its currently approved rate of 4.4 cents per MMBtu for transportation under the blanket certificate, under Section 311, and for its existing service for Natural Gas Pipeline Company of America.

Comment date: July 6, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-440-000]

June 15, 1988.

Take notice that on June 3, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP88-440-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon the purchase of natural gas from United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it is a party to a service agreement with United dated November 1, 1984, under United's Rate Schedule PL-N. It is indicated that pursuant to the agreement, United is obligated to deliver up to a maximum daily quantity of 175,000 Mcf of gas per day during the period from November 1, 1985, through October 31, 2000. Southern states that the sale by United under the service agreement was authorized by the Commission by order issued September 30, 1985, in Docket No. CP85-310-000.

Southern asserts that the proposed abandonment is warranted for four principal reasons: (1) Southern believes that it has no immediate or foreseeable need for gas from United given the dramatic decline in its sales and the existing level of gas reserves that remain committed to Southern under

long-term contracts, (2) Southern argues that because of the continuing decline in United's long-term reserve base, United's ability to provide a reliable supply throughout the life of the service agreement is suspect, (3) continuation of the service obligation under the 1985 service agreement would subject Southern and its customers to excessive demand charges and/or increase its purchased gas costs, undermining its least-cost purchasing policy, and (4) changes in the character of service offered by United under its PL-N rate schedule have rendered such service of no further benefit to Southern's customers.

Comment date: July 6, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Company

[Docket No. CP87-57-004]

June 15, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Corporation (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-57-004, a petition to amend further the order issued in Docket No. CP87-57-000, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to modify the existing transportation service by adding receipt points, increasing the maximum daily quantity and extending the term, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

FGT requests the changes to reflect an amended transportation agreement signed by FGT and Monsanto Chemical Company (Monsanto), for whom FGT is transporting natural gas, April 21, 1988. It is stated that the changes include the addition of eleven receipt points, an increase in the maximum daily transportation quantity from 15,000 MMBtu of gas to 20,000 MMBtu and the extension of the transportation term for an additional year. It is asserted that no additional facilities would be required for the proposed modifications. It is explained that the gas transported from the new receipt points would be used by Monsanto at its chemical plant in Santa Rosa County, Florida. It is further explained that the transportation service is on an interruptible basis, and therefore, that the proposed modifications would have no adverse impact on FGT's existing customers.

Comment date: July 6, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should be on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13746 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-453-000, et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

June 14, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-453-000]

Take notice that on June 6, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP88-453-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Panhandle Trading Company (Panhandle), a marketer, under the certificate issued in Docket No. CP86-586-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 100,000 Mcf per day on behalf of Panhandle pursuant to a transportation agreement dated March 24, 1988, as amended May 17, 1988. The agreement provided for Trunkline to receive gas from various existing points of receipt on its system in Illinois, Louisiana, offshore Louisiana, Tennessee and Texas, it is stated. Trunkline states that it would transport and redeliver the gas, less fuel used and unaccounted for line loss to Consumers Power Company in Elkhart County, Indiana and Michigan Gas Utilities in Elkhart County, Indiana for various end-users.

Trunkline further states that the estimated daily and estimated annual quantities would be 8,000 Mcf and 2,920,000 Mcf, respectively. Trunkline asserted that service under § 284.223(a) commenced on April 1, 1988, as reported in Docket No. ST88-3588 and that an amendment to the agreement dated May 17, 1988, was filed in a subsequent report pursuant to § 284.223(f)(2) under Docket No. ST88-3588.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP88-456-000]

Take notice that on June 7, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-456-000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for Texaco Producing, Inc. (Texaco), a producer, under the certificate issued in Docket No. CP86-582-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated March 21, 1988, as amended, it proposes to transport up to 80,000 MMBtu per day of equivalent natural gas on an interruptible basis for Texaco from points of receipt listed in Exhibit "A" of the agreement to redelivery points listed in Exhibit "B". The subject transportation service would involve interconnections between Natural and various transporters. Natural states that it would receive the gas at various existing points on its system from Offshore Louisiana, Louisiana, New Mexico, Oklahoma, and Texas, and that it would transport and redeliver the gas, less fuel used and unaccounted for line loss, to Texaco in Arkansas and Louisiana. It is stated that the transportation service would be performed under Natural's Rate Schedule ITS and that Texaco would reimburse Natural for any volumes attributable to fuel gas and gas lost and unaccounted for.

Natural further states that the estimated average daily and annual quantities would be equivalent to 35,000 MMBtu and 12,775,000 MMBtu, respectively. Natural advises that service under § 284.223(a) commenced April 5, 1988, as reported in Docket No. ST88-3816.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP88-449-000]

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-449-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas

Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated April 25, 1988, it proposes to transport natural gas for Citizens from points of receipt located in the states of Louisiana and Texas and Offshore Louisiana to points of delivery located in the states of Louisiana and Mississippi. The locations of the ultimate delivery point of the gas are the States of Pennsylvania, New York, Massachusetts, Connecticut, New Hampshire, Ohio, West Virginia, Maryland, New Jersey, Illinois and Indiana, it is stated.

Tennessee further states that the peak day quantities would be 84,000 dekatherms, the average daily quantities would be 991 dekatherms, and that the annual quantities would be 361,715 dekatherms. Service under § 284.223(a) commenced May 10, 1988, as reported in Docket No. ST88-3970 (filed May 31, 1988).

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88-439-000]

Take notice that on June 3, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-439-000, a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Union Texas Petroleum Corporation (Union Texas), a producer, under Tennessee's blanket certificate issued on June 18, 1987, in Docket No. CP87-115-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport for Union Texas up to 200,000 dth per day of natural gas, or approximately, 1,115,440 dth annually, pursuant to a transportation agreement dated April 22, 1988, from numerous receipt points located Offshore Louisiana and in the State of Louisiana, to various delivery points on Tennessee's system in several states. Tennessee stated that it filed on May 20, 1988, in Docket No. ST88-3754 a

report that service for Union Texas had commenced.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP88-447-000]

Take notice that on June 6, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-447-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Union Texas Petroleum Corporation (Union Texas) under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated September 25, 1987, it proposes to transport natural gas for Union Texas, a producer, from a point of receipt located Offshore Louisiana to a point of delivery located in the State of Mississippi. It is stated that the location of the ultimate delivery point of the gas is New York. Tennessee advises that the peak day quantities would be 20,000 dekatherms, the average daily quantities would be 3,377 dekatherms, and the annual quantities would be 1,232,605 dekatherms. Finally, Tennessee states that the transportation service commenced May 5, 1988, under § 284.223(a), as reported in Docket No. ST88-3973 (filed May 31, 1988).

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP88-457-000]

Take notice that on June 7, 1988, Tennessee Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-457-000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authority to transport natural gas on behalf of Nagasco Marketing, Inc. (Nagasco), a marketer of natural gas, under the certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated February 5, 1988, as amended, April 21, 1988,¹ Natural states it would transport on an interruptible basis, up to 50,000 Mcf of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Nagasco from various receipt points located in Oklahoma, Texas, Iowa, and Kansas, to various delivery points located in Illinois and Iowa. Construction of facilities will not be required to provide the proposed service.

Natural further states that the peak day, average day, and annual quantities would be 50,000 Mcf (plus any additional volumes pursuant to its Rate Schedule ITS), 15,000 Mcf, and 5,475,000 Mcf, respectively. Natural indicates that service under § 284.223(a) of the Commission's Regulations was reported in Docket No. ST88-3773.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP88-458-000]

Take notice that on June 7, 1988, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511 Houston, Texas 77252, filed in Docket No. CP88-458-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport natural gas for Tejas Power Corporation (Tejas). Tennessee explains that service commenced May 4, 1988 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-3977. Tennessee further explains that the peak day quantity would be 50,000 dekatherms, the average daily quantity would be 2,022 dekatherms, and that the annual quantity would be 738,030 dekatherms. Tennessee explains that it would receive natural gas for Tejas' account in Texas, Offshore Louisiana and Louisiana. Tennessee states that the points of delivery are located in the states of Louisiana and Mississippi.

¹ This amendment changed specific receipt points which were not included in Natural's initial report filed May 23, 1988 at Docket No. ST88-3773. Natural states it will file a supplement to its initial report to include these changes.

Comment date: July 29, 1988, in accordance with Standard Paragraph G at the end of this notice.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-13747 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

Establishment of Performance Review Board; Names of Board Members

June 14, 1988.

Section 4314(c) of title 5, United States code (as amended by the Civil Service Reform Act of 1978), requires that the Federal Energy Regulatory Commission establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards to review, evaluate, and make final recommendations on performance appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written recommendations to the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards, and performance-related actions.

Section 4314(c) of title 5, United States code requires that notice of appointment of Performance Review Board members be published in the *Federal Register*.

The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

Anderson, Lawrence R.
Battese, Andrew W.
Beirne, Raymond A.
Bohi, Douglas R.
Christin, Robert F.
Cackowski, Robert E.
Connelly, William
Cook, Catherine C.

Cook, David N.
Corso, Ronald A.
Court, Susan J.
Edson, Quentin A.
Faudree, Jr., Russell E.
Feit, Jerome M.
Fitzgerald, Morris R.
Fitzgibbons, Jr., Robert G.
Fowlkes, Edward J.
Frangipane, Joseph A.
Gale, Roger W.
Head, Elizabeth L.
Herod, James S.
Kilchrist, Howard
Madden, Kevin P.
Mason, II, Vincent E.
Mathura, Randolph E.
Merna, James E.
Milbourn, Jerry R.
Miles, Richard L.
Murdock, Gordon E.
Nygaard, Karen Kristina
O'Neill, Richard P.
Pratt, George L.
Pusateri, Kenneth M.
Scarborough, Robert E.
Scherman, William S.
Schneider, Howard B.
Schopf, Michael
Slavin, Leon Jacob
Springer, Fred E.
Stiltner, Roy
Szekely, Robert J.
Toronto, Anthony F.
Warner, Christopher J.
Wolfman, Andrea C.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13748 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-170-004]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 14, 1988.

Take notice that on June 6, 1988, Mississippi River Transmission Corporation ("MRT") tendered for filing Second Substitute Twenty-Second Revised Sheet No. 4 and Substitute Original Sheet No. 4C to its FERC Gas Tariff to be effective May 1, 1988, and a Refund Report.

MRT states the purpose of the tariff filing is to implement the Base Tariff Rates as set forth in Appendix A of the Stipulation and Agreement ("Agreement") at Docket No. RP86-170-000 which was approved by Commission Order issued April 7, 1988. The revised tariff sheets reflect currently effective Purchased Gas Cost Adjustments accepted by the Commission in Docket No. TA88-2-25-000.

The Refund Report sets forth the cash distributions made to MRT's

jurisdictional sales customers affected by the Agreement.

MRT states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to motion or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13749 Filed 6-16-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-78-034]

Penn-York Energy Corp.; Filing

June 14, 1988.

Take notice that on June 7, 1988, Penn-York Energy Corporation (Penn-York) tendered for filing certain tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1.

The purpose of this filing is to correct sheet numbers that were filed on May 31, 1988. Penn-York requests the following tariff sheets be substituted for the originally filed sheets:

Third Revised Sheet No. 1
First Revised Sheet No. 21
Second Revised Sheet Nos. 41, 42 and 43
Second Revised Sheet Nos. 46 and 47
First Revised Sheet No. 48
First Revised Sheet Nos. 51 and 52

In addition, North-Penn requests the following tariff sheets that were included in the May 31, 1988 filing be withdrawn:

Original Sheet No. 2
Original Sheet Nos. 22, 23, 24, 25, 26 and 27
Original Sheet Nos. 30, 31, 32, 33 and 34
Original Sheet No. 36-40

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-13711 Filed 6-16-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP88-442-000]

Trunkline Gas Co.; Request Under Blanket Authorization

June 14, 1988.

Take notice that on June 3, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP88-442-000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to transport natural gas for Amoco Production Company (Amoco), a producer, under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline requests authorization to transport up to 150,000 Dt. equivalent of natural gas per day on behalf of Amoco pursuant to a transportation agreement dated April 8, 1988, among Trunkline and Amoco (Agreement). The agreement, it is said, provides for

Trunkline to receive gas from various existing points of receipt on its system in Illinois, Louisiana, Offshore Louisiana, Tennessee and Texas. Trunkline states that it would then transport and redeliver subject gas, less fuel used and unaccounted for line loss to: (1) ANR Pipeline Company, (ANR), in St. Mary Parish, Louisiana, (2) Columbia Gulf Transmission Company, (Columbia Gulf), in St. Mary Parish, Louisiana, (3) Florida Gas Transmission Company, (Florida Gas), in Brazoria County, Texas, (4) Natural Gas Pipeline Company of America, (NGPL), in Montgomery County, Texas, (5) Southern Natural Gas Company, (SNG), in St. Mary Parish, Louisiana, (6) Tennessee Gas Pipeline Company, (Tennessee Gas), in St. Mary Parish, Louisiana, (7) Texas Eastern Transmission Corporation, (TETCO), in Beauregard Parish, Louisiana, (8) Transcontinental Gas Pipe Corporation, (Transco), in Beauregard Parish, Louisiana, (9) United Gas Pipeline Company, (UGPL), in St. Mary Parish, Louisiana, and (10) Sabine Pipe Line Company, (Sabine), in Vermilion Parish, Louisiana, for various end-users, interstate pipelines and local distribution companies.

Trunkline further states that the estimated daily and estimated annual quantities would be 45,000 Dt. equivalent and 16,400,000 Dt. equivalent respectively. It is said that service under Section 284.223(a) commenced on April 12, 1988, as reported in Docket No. ST88-3568.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the

request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and a withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 88-13710 Filed 6-16-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of May 13 through May 20, 1988

During the Week of May 13 through May 20, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 9, 1988.

Richard W. Dugan,
Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 13 through May 20, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 25, 1988.....	Glen Milner, Seattle, WA.....	KFA-0188	Appeal of an Information Request Denial. If granted: The April 15, 1988, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Glen Milner would receive access to a joint nuclear weapons publications system publication entitled "TP-45-51A," in its entirety.
May 18, 1988.....	Aminoil/Jim Thomas Enterprises, St. Louis, MO.	RR139-11	Request for Modification/Rescission. If granted: The May 20, 1987, Decision and Order issued to Jim Thomas Enterprises (Case No. RF139-107) would be rescinded, regarding the firm's application in the Aminoil Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 13 through May 20, 1988]

Date	Name and location of applicant	Case No.	Type of submission
May 18, 1988	Aminoil/Murray & Massie Butane, St. Louis, MO.	RR139-12	Request for Modification/Rescission. If granted: The May 27, 1986, Decision and Order issued to Murray & Massie Butane (Case No. RF139-93) would be modified, regarding the firm's application in the Aminoil refund proceeding.
May 18, 1988	Economic Regulatory Administration, Washington, DC.	KRD-0591	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with a Proposed Remedial Order issued to Clark Oil & Refining Corp. et al. (Case No. KRO-0590).
May 18, 1988	Mobil/Middletown Oil Co., Middletown, OH.	RR225-30 & RR225-31	Request for Modification/Rescission. If granted: The March 2, 1988 determination issued to Middletown Oil Co. (Case No. RF225-10976) would be modified, regarding the firm's application for refund in the Mobil Oil proceeding.

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/17/88.....	Vickers/Michigan.....	RQ1-453
7/13/88 thru 5/20/88...	Crude Oil Refund Applications Received.....	RF272-56225 thru RF272-57074
5/13/88 thru 5/20/88...	Gulf Oil Refund Applications Received.....	RF300-6773 thru RF300-6907
5/13/88 thru 5/20/88...	ARCO Refund Applications Received.....	RF304-3027 thru RF304-3098
5/19/88.....	North Peachtree Gulf.....	RF40-3705
5/19/88.....	Wilcox & Holt.....	RF40-3706
5/19/88.....	Harley Cold Store Gulf.....	RF40-3707
5/17/88.....	Donahue Gas, Inc.....	RF265-2645
5/17/88.....	Armstrong's Store, Inc.....	RF265-2647
5/17/88.....	Warren Service & Supply, Inc.....	RF265-2648
5/17/88.....	Wabash Valley Heat & Gas Corp.....	RF265-2649
5/17/88.....	Farmers & Merch. Co-operative.....	RF265-2650
5/17/88.....	Farmers & Merch. Co-operative.....	RF265-2651
5/17/88.....	Farmers & Merch. Co-operative.....	RF265-2652
5/17/88.....	Farmers & Merch. Co-operative.....	RF265-2653
4/2/87.....	Amoco Oil Company.....	RF265-2654
4/2/87.....	Amoco Oil Company.....	RF265-2655
5/18/88.....	Wiemann Ice & Fuel Company.....	RF265-2656
5/18/88.....	Waterloo LP Gas.....	RF265-2657
5/23/88.....	Hartzler's Store.....	RF265-2658
5/19/88.....	John George.....	RF265-2659
5/20/88.....	Beckshire Impl. Company.....	RF265-2660
5/20/88.....	Newell Gas & Appliance Inc.....	RF225-11025
5/19/86.....	Beaulier Oil Company.....	RF225-11026
5/19/86.....	Beaulier Oil Company.....	RF225-11027
8/4/86.....	General Motors Corporation.....	

[FR Doc. 88-13693 Filed 6-16-88; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 4 Through April 8, 1988

During the week of April 4 through April 8, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of

submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Suffolk County, Long Island, New York,
4/8/88, KFA-0168, KFA-0169

Suffolk County, Long Island, New York (Suffolk County) filed requests under the Freedom of Information Act (the FOIA). Failing to receive responses within the time limit prescribed by the FOIA, it lodged appeals with the Office of Hearings and Appeals (OHA). The OHA pointed out that its jurisdiction to consider appeals extended only to those

instances in which there was an initial denial by the DOE Office which received the request for information. Because a fundamental prerequisite to jurisdiction was absent, OHA could not exercise its FOIA appellate jurisdiction in these cases. Further, the OHA determined that the lack of an initial determination is not a constructive denial of a request for information under the FOIA that could confer jurisdiction on OHA and overruled precedent that indicated the contrary. Finally, the OHA noted that when there is a lack of an administratively appealable FOIA

determination, a requester can contact the relevant DOE decision-maker directly or bring suit in federal district court. Accordingly, the appeals were dismissed.

The Herald, 4/8/88, KFA-0167

The Herald filed an Appeal from a denial by the Senior Information Officer of the Albuquerque Operations Office of a Request for Information which it had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the documents at issue were properly withheld under Exemption 5. The important issue considered in the Decision and Order involved whether documents used in a fee award determination came within the agency's deliberative process privilege.

Request for Exception

National Oil & Supply Company, Inc., 4/7/88, KEE-0122

National Oil & Supply Company, Inc. filed an Application for Exception in which it sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm failed to demonstrate that it was experiencing a significantly greater hardship than other reporting firms. Accordingly, exception relief was denied.

Motion for Discovery

McWhirter Distributing Co., 4/5/88, KR-0380

McWhirter Distributing Company, Inc. filed a Motion for Discovery in connection with its Statement of Objections to the Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration (ERA). In reviewing McWhirter's request to depose an ERA auditor regarding advice given to McWhirter concerning its pricing scheme, the DOE held that McWhirter had failed to allege circumstances which would justify the firm's estoppel argument. The DOE also found that McWhirter's discovery requests concerning a 1974 Compliance Agreement signed by McWhirter and the ERA were not relevant to the accuracy of the pricing allegations stated in the PRO. Finally, the DOE rejected McWhirter's request for records of contacts between the firm and the ERA prior to the issuance of the PRO on the grounds that the information would not be relevant to the allegations contained in the PRO. Accordingly, McWhirter's discovery motion was denied.

Interlocutory Order

Telum, Inc., 4/7/88, KRZ-0081

The Department of Energy (DOE) issued an Interlocutory Order to Telum, Inc., related to a Proposed Remedial Order alleging that Telum failed to properly apply the new item/new market rule in determining its prices of middle distillate fuel to a public utility. Since the DOE found that ERA's selection of Telum's nearest comparable outlet was erroneous, the PRO was remanded to the ERA for a new determination regarding Telum's nearest comparable outlet and issuance of a Revised Proposed Remedial Order.

Implementation of Special Refund Proceedings

Sauvage Gas Company, Inc., *Sauvage Gas Service Company, Inc.*, 4/7/88, KEF-0024

The Department of Energy issued a Decision and Order implementing a plan to distribute \$390,000 (plus accrued interest) obtained pursuant to a consent order with Sauvage Gas Company, Inc. and Sauvage Gas Service Company, Inc. The DOE decided to distribute the funds to applicants who purchased propane, butane, natural gasoline, middle distillates and NGL mixed stream products from Sauvage during the period June 13, 1973, through the date of decontrol of each covered product. Specific information to be included in refund applications is set forth in the Decision.

Refund Applications

Allen H. Agle Sons, et al., 4/7/88, RF272-4376, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed to be injured. The sum of the refunds granted in this Decision is \$1,272.

Aminoil U.S.A., Inc. speaker Propane Gas Co., 4/8/88, RF139-130

The DOE issued a Decision and Order concerning an Application for Refund filed by Speaker Propane Gas Company in the Aminoil U.S.A., Inc. Special refund proceeding. The DOE found that Speaker had demonstrated injury as a result of its Aminoil purchases, and determined that the firm should receive a refund of \$123,403, representing \$66,812 in principal and \$56,591 in interest.

Bill Huffstutler, et al., 4/7/88, RF272-2924, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 44 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,071.

Billy Fred Platt, et al., 4/8/88, RF272-5787, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 26 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,702.

Charles Hicks Farm, et al., 4/7/88, RF272-6547, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,663.

David Foehner, et al., 4/4/88, RF272-8812, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 45 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,292.

David L. Schroeder, et al., 4/7/88, RF272-6654, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$222.

Eastern Oil Company/United Petroleum, Inc., 4/4/88, RF306-1

The DOE issued a Decision and Order granting an Application for Refund filed by United Petroleum, Inc., a reseller of motor gasoline sold by Eastern Oil Company. United provided evidence that it had banks of unrecouped increased product costs sufficient to support the refund claimed, and that it suffered a competitive disadvantage as a result of its purchases from Eastern. United therefore was granted a refund of \$85,243, representing \$75,824 in principal and \$9,419 in interest.

Ellie Nance, et al., 4/8/88, RF272-5950, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$9,454.

Elm City Filling Stations, Inc./Defense Fuel Supply Center, Ultramar Petroleum, Inc., 4/6/88, RF255-1, RF255-2

The DOE issued a Decision and Order concerning Applications for Refund filed by the Defense Fuel Supply Center (DFSC) and Ultramar Petroleum, Inc. (Ultramar) in the Elm City Filling Stations, Inc. special refund proceeding. The DOE found that Ultramar, a spot purchaser of Elm City residual fuel oil, successfully rebutted the presumption that it was not injured, by showing that its purchase from Elm City was mandated by the need to meet the fuel requirements of its customers and not to generate higher profits for itself. In view of that finding, the DOE determined that the DFSC, a purchaser of Ultramar residual fuel oil in the same month in which Ultramar purchased that product from Elm City, was not eligible for a refund. Accordingly, the DFSC's request for a refund was denied and Ultramar was granted a refund of \$249,196, representing \$166,444 in principal and \$82,752 in accrued interest.

Farmer Stutz, Inc., et al., 4/8/88, RF272-3322, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharges funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was

therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,423.

Francis Mains, et al., 4/6/88, RF272-6401, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharges funds to 19 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$400.

Gary Energy Corp./H.S. Sowards & Sons, Inc., 4/5/88, RR47-3

The DOE issued a Decision and Order considering a Motion for Reconsideration filed by H.S. Sowards & Sons, Inc. in the Gary Energy Corporation special refund proceeding. In a prior refund determination, the DOE had found that the firm's bank of unrecouped costs for butane was insufficient to support the full refund claimed for that product. In considering Soward's motion, the DOE found that the firm had not presented convincing reasons why the DOE's prior determination regarding the firm's butane bank was erroneous. Accordingly, the Motion for Reconsideration was denied.

Getty Oil Company/Gramco Oil Company, et al., 4/4/88, RF265-2604, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicants were all eligible for a refund below the \$5,000 small claims threshold. The sum of the refunds approved in this Decision is \$22,048, representing \$10,853 in principal and \$11,195 in accrued interest.

Getty Oil Company/Kellett Oil Company, et al., 4/6/88, RF265-0519, et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. All of the applicants elected to receive a refund based on percentage presumptions of injury. The sum of the refunds approved in this Decision is \$208,813, representing \$102,789 in principal and \$106,024 in accrued interest.

Iowa Power and Light Company, 4/8/88, RF272-214

Iowa Power and Light Company (IPL), an investor-owned utility, filed an application for refund in the Subpart V crude oil refund proceedings. A group of States filed an objection to IPL's application, claiming that IPL should not be eligible to receive a refund because the utility itself was not an injured end-user. The States also claimed that IPL should not be permitted to act as a conduit for the distribution of refund benefits to its injured customers. The DOE rejected both of the arguments, finding that IPL was not claiming a refund for itself, but rather agreed to pass through to its customers the benefits of any refund received. The DOE also found that the Stripper Well Settlement Agreement permitted utilities to receive a refund in Subpart V crude oil proceedings in order to effect direct restitution to their injured customers. Accordingly, IPL was granted a refund of \$10,621.

J. Clayton Swinbank, et al., 4/5/88, RF272-4740, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,282.

Madison Gas & Electric Company/Newport Electric Corporation/Citizens Utilities Company, 4/8/88, RF272-224, RF272-233, RF272-287

Madison Gas & Electric Company, Newport Electric Corporation, and Citizens Utilities Company filed applications for refund in the Subpart V crude oil refund proceedings. A group of States filed objections to the applications, claiming that the applicants were not eligible to receive refunds because they were not injured end-users. The States also claimed that the applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers. The DOE rejected both of the States' arguments, finding that the applicants were not claiming a refund for themselves, but rather agreed to pass through to their customers the benefits of any refunds which they would receive. The DOE also found that the Stripper Well Settlement Agreement permitted utilities to receive refunds in Subpart V crude oil proceedings in order

to effect direct restitution to their injured customers. Accordingly, the applicants were granted refunds totalling \$27,938.

Marathon Petroleum Company/Bonded Oil Company Shareholders, 4/5/88, RF250-2721

The DOE issued a decision and Order considering an Application for Refund filed by the Bonded Oil Company Shareholders from a consent order fund made available by Marathon Petroleum Company. The Shareholders were the owners of Bonded Oil Company until the firm was sold to Marathon in January 1975. Bonded is a reseller of Marathon products. The DOE first determined that the Shareholders were eligible for a Marathon refund only during the period prior to the sale of Bonded to Marathon. The DOE then found that since the Shareholders did not prove injury they could receive a maximum refund of \$50,000, based on the 35 percent presumption of injury methodology. The DOE determined that the refund should be issued to the Shareholders' Representative. The Shareholders' Representative was made responsible for notifying all Shareholders of the issuance of the refund and for submitting to the OHA and to the Shareholders a plan for disbursing the funds to the Shareholders. The total granted was \$50,000 in principal and \$7,859 in interest.

Marathon Petroleum Co./Bostick Brothers, Inc., Et Al., 4/4/88, RF250-2407, et al.

Bostick Brothers, Inc. and three other firms filed Applications for Refund from a consent order fund made available by Marathon Petroleum Company. Each of the applicants documented its purchases of Marathon product during the Marathon consent order period. Each elected to receive a refund under the injury presumption methodology. The DOE therefore granted each of the applicants a refund of \$5,000 or 35 percent of the applicant's allocable share, whichever was greater. The total refunds granted in this Decision were \$28,487 in principal, plus \$4,181 in accrued interest.

Marathon Petroleum Company/Pilot Oil Corporation, 4/5/88, RF250-2743

The DOE issued a Decision and Order concerning an Application for Refund filed by Pilot Oil Corporation in connection with a consent order fund made available by Marathon Petroleum Company. Pilot, a reseller of Marathon motor gasoline and middle distillates, indicated that 50 percent of its stock owned by Marathon during the refund

period. In considering the Pilot application, the DOE found that Pilot failed to establish that it was injured as a result of its Marathon purchases. The DOE noted that Pilot had not shown that it had banks of unrecovered costs throughout the refund period. The DOE also found that Pilot's allegation that during the refund period it did not achieve its May 15, 1973 profit margin was not sufficient to establish that it was injured. The DOE further determined that since 50 percent of Pilot stock was owned by Marathon, there was no basis for adopting any presumption of injury with respect to Pilot's Marathon purchases. Accordingly, Pilot's refund application was denied.

Marine Petroleum Company and Mars Oil Company/Fred Nixon Service Station, 4/8/88, RF257-7

The DOE issued a Decision and Order concerning an Application for Refund filed by Fred Nixon Service Station from a consent order fund made available by Marine Petroleum Company and Mars Oil Company. As a reseller-retailer applying for a small claims refund, Nixon was presumed to have been injured. The DOE concluded that the firm should receive a refund of \$491, representing \$283 in principal and \$208 in interest.

Pacific Gas & Electric Company, Southern California Edison Company, Cooperative Power, Et Al., 4/8/88, RS272-2877, RS272-282, RS272-283, et al.

A group of 30 states and territories (States) filed Applications for Stay of Disbursement of crude oil refunds previously approved for two utilities: Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (Edison). In denying these applications, the DOE found that no irreparable injury would occur if refunds are disbursed to the large, solvent public utilities. The States also filed Applications for Stay of Decisions in a group of undecided Applications for Refund filed by 47 other utilities in the Crude Oil Subpart V Proceeding. The States grounded these Applications for Stay on the fact that they had appealed DOE's decision concerning PG&E and Edison to the United States District Court for the District of Kansas, claiming that these decisions violate the Stripper Well Settlement Agreement approved by that court. The DOE determined that the Applications for Stay did not meet the criteria upon which approval of applications for stay may be granted. Nevertheless, to assure orderly processing of refund claims and

in the interest of comity, the DOE determined that it would refrain from disbursing refunds to the utilities identified by the States in their Applications for Stay, pending a judicial determination by the Kansas District Court on the States' appeal.

Pittsburgh Press Company, et al., 4/6/88, RF272-6113, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,603.

Pyrofax Gas Corporation/The Disston Company, 4/7/88, RF277-12

The DOE issued a Decision and Order concerning an Application for Refund filed by The Disston Company from a settlement fund received from Pyrofax Gas Corporation. As an identified end-user of Pyrofax product, Disston was presumed to have been injured and elected to accept the ERA audit file share of the consent order funds. The firm was granted a refund of \$1,134, representing \$612 in principal and \$522 in interest.

R. Paul Johnson, et al., 4/7/88, RF272-5731, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 47 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$986.

Service America Corp., et al., 4/6/88, RF272-6122, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$3,266.

Standard Oil Co. (Indiana)/Texas, et al., 4/6/88, RQ251-420, et al.

The DOE issued a Decision and Order approving the second-stage refund

applications and motions for modification filed by the State of Texas. Texas proposed to spend all of its second-stage monies to fund three programs. The first program funds the purchase of rideshare vans, as well as tools necessary to provide tune-ups and other maintenance for those vans. The second program would provide matching funds for rural transit operators. The final program would replace or retime some 5,200 traffic light signals during a four-year period. The DOE found that these projects would reduce motorists' consumption of motor gasoline, thereby providing indirect restitution to injured consumers of refined petroleum products. Accordingly, the motions for modification were approved and Texas was granted an additional refund of \$5,979,934, representing \$4,498,153 in principal plus \$1,481,781 in interest.

Tuckahoe Gardens Servicenter, 4/7/88, RF272-1180

The DOE issued a Decision and Order denying Tuckahoe Gardens Servicenter's Application for Refund from crude oil overcharge funds. Tuckahoe was a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Tuckahoe did not demonstrate that it was injured due to the crude oil overcharges, it was ineligible for a crude oil refund.

Village of Wolbach, et al., 4/7/88, RF272-8806, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 11 applicants, based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$917.

Watson Hardy, et al., 4/6/88, RF272-6344, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,220.

Dismissals

The following submissions were dismissed:

Name and Case No.

Defense Fuel Supply Center, RF261-10.

Department of Interior/Navajo; HEE-0083.

Economic Regulatory Admin./CHR Energy Corp., KEG-0014.

Florida Rock Industries, RD272-167.

Kathleen Dunkerly, RF272-8712.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

June 9, 1988.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-13691 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of May 2 Through May 13, 1988

During the period of May 2 through May 13, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application and exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of

Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

June 9, 1988.

Bock Oil Company, Hagerstown, Maryland; KEE-0165, Reporting Requirements

Bock Oil Company filed an Application for Exception from the provisions of filing Form EIA-782B. The Exception request, if granted, would permit Bock Oil Company to be exempt from filing Form EIA-782B. On May 10, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 88-13692 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$715,420.48 (plus accrued interest) obtained from MCO Holdings, Inc. and its wholly owned subsidiary, MGPC, Inc., formerly McCulloch Gas Processing Corporation. The funds will be distributed in accordance with DOE's special refund procedures pursuant to 10 CFR Part 205, Subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate by July 18, 1988 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display conspicuously a reference to Case Number KEF-0108.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. 10 CFR 205.282(b). The Proposed

Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from MCO Holdings, Inc. and its wholly owned subsidiary, MGPC, Inc., formerly McCulloch Gas Processing Corporation. The firm remitted monies to the DOE to settle possible pricing violations with respect to its sale of natural gas liquids and natural gas liquid products. The firm's payment is being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 8, 1988.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

June 8, 1988.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm:

MCO Holdings, Inc.

MGPC, Inc.

Date of Filing: March 25, 1988

Case Number: KEF-0108

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on March 25, 1988. In the Petition, the ERA requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order between the DOE and MCO Holdings, Inc., and its wholly owned subsidiary MGPC, Inc., formerly McCulloch Gas Processing Corporation (collectively referred to hereinafter as MGPC).

I. Background

MGPC was a refiner and natural gas processor which produced and sold natural gas liquids (NGLs), natural gas liquid products (NGLPs), and crude oil condensate. On the basis of an audit of the firm's pricing practices, the ERA alleged that MGPC overcharged its customers in sales of NGLs, NGLPs, and crude oil condensate.

Subsequently, the DOE and MGPC entered into a consent order which settled all issues pertaining to MGPC's operations during the period January 1, 1973 through January 28, 1981 (the consent order period). Under the terms of the consent order, MGPC remitted \$715,420.48 to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained by the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is the DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the settlement fund. We therefore propose to grant the ERA's petition and assume jurisdiction over the MGPC consent order fund. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds.

III. Proposed Refund Procedures

A. Consent Order Fund. The consent order fund will be distributed to customers of MGPC who were adversely affected by the firm's alleged overcharges. While the consent order states that it settles, *inter alia*, an enforcement proceeding involving MGPC's sales of crude oil condensate, for the following reasons we propose that the entire consent order amount be made available for distribution to eligible MGPC NGL and NGLP purchasers. In the crude oil proceeding, a Remedial Order was issued to MGPC

on February 16, 1983 in which the DOE found that the firm overcharged its customers by \$124,310.81 in sales of crude oil condensate.¹ See *MGPC, Inc.*, 10 DOE ¶ 83,021 at 86,211 (1983). However, that Remedial Order was appealed to the Federal Energy Regulatory Commission, which vacated the Remedial Order and remanded the case to the OHA for further consideration. See *MGPC, Inc.*, 32 FERC ¶ 61,443 (1985). During the period subsequent to the remand and prior to the finalization of the consent order, no further action was taken by either party in that proceeding. Although the consent order does not state how the settlement amount was arrived at, according to the ERA, MGPC's alleged violations in sales of crude oil condensate were not taken into consideration in the negotiation of that amount. See Memorandum of April 12, 1988 telephone conversation between Jeffrey Whieldon, ERA staff attorney, and Chris Ashley, OHA staff analyst. Therefore despite the fact that the remanded crude oil proceeding, Case No. KCX-0005, was resolved by the consent order, the consent order amount is based solely upon MGPC's alleged violations in sales of NGLs and NGLPs. We therefore propose to make the entire consent order fund available to eligible MGPC NGL and NGLP purchasers.²

B. Eligibility for Refunds. We propose to accept refund applications from purchasers of MGPC NGLs and NGLPs who can show that they were injured as a result of MGPC's pricing practices. The Appendix to this Proposed Decision lists the firms who were identified in the ERA audit file as purchasers of MGPC NGLs and NGLPs during the period August 1973 through March 1975 (the audit period). Based upon this audit information, we expect that most eligible refund claimants will be resellers (including retailers and refiners) of MGPC NGLs and NGLPs. However, because the audit file does not contain an exhaustive list of all of MGPC's transactions and because the consent order period is much longer than the audit period, we will accept refund applications from any MGPC customer, including end-users (ultimate

¹ Crude oil condensate, a group of heavy hydrocarbons separable from a wet natural gas stream, was treated as crude oil under the DOE price regulations. See Ruling 1975-18, 2 Fed. Energy Guidelines ¶ 16,058 at 16,057.

² We are sending a copy of this Proposed Decision to Black Hills Oil Marketers (Black Hills), one of the two firms identified in the ERA audit file as a purchaser of MGPC condensate. We have been unable to locate a current address for the other identified condensate purchaser, Western Crude Oil company. These firms may submit comments within the time limit set forth in Part V *infra*.

consumers) and regulated entities, who can show that it was injured as a result of MGPC's pricing practices.

In order to be eligible for a refund, each claimant will be required to submit a monthly schedule of its purchases of MGPC NGLs and NGLPs during the period June 13, 1973 through the relevant decontrol date for each product.³ If the product was not purchased directly from MGPC, the claimant must explain why it believes that the product originated with MGPC.

In addition, a reseller claimant, except a firm that uses one of the presumptions of injury set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, the claimant will be required to show that it maintained "banks" of unrecouped increased product costs in excess of the refund claimed. Second, because a showing of banks alone is not sufficient to establish injury, the claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from MGPC. *Id.*

1. *End-users.* As in many other refund proceedings, we propose to adopt the presumption that end-users or ultimate consumers of MGPC NGLs and NGLPs whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by references to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be

beyond the scope of a special refund proceeding. See *Office of Enforcement*, 10 DOE ¶ 85,072 (1983). We therefore propose that end-users of MGPC NGLs and NGLPs need only document their purchase volumes from MGPC during the regulatory period to make a sufficient showing that they were injured by the alleged overcharges.

2. *Regulated Firms.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a government agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of purchase volumes used by itself, or in the case of a cooperative, sold to its members. However, a regulated firm or cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. See *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *Office of Special Counsel*, 29 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refund received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and similarly, refunds would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

3. *Applicants Seeking Refunds of \$5,000 or Less.* We propose to adopt a presumption that a firm who resold MGPC NGLs and NGLPs and requests a refund of \$5,000 or less was injured by the alleged overcharges. Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from MGPC. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banked costs, or that they did not pass through the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing

information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. Therefore, any reseller claiming a refund of \$5,000 or less need only document its purchase volumes in order to be eligible to receive a refund.

4. *Medium-Range Claimants.* In lieu of making a detailed showing of injury, a reseller claimant whose allocable share of the consent order fund exceeds \$5,000 may elect to receive as its refund the larger of \$5,000 or 60 percent of its allocable share up to \$50,000. The use of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. Previously, we have determined that a 60 percent presumption for medium-range purchasers of NGLs and NGLPs accurately reflected the amount of their injury as a result of those purchases. See *Sauvage, Gas Co., Inc.*, 17 DOE ¶ 85,304 (1988); *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987). For the reasons set forth in those Decisions, we propose to establish a 60 percent presumptive level of injury for medium-range claimants in this proceeding. Consequently, a claimant in this group will only be required to provide documentation of its purchase volumes of MGPC NGLs and NGLPs in order to be eligible to receive a refund of 60 percent of its total volumetric share.

5. *Spot Purchasers.* We also propose to adopt the rebuttable presumption that resellers which made only spot purchases of MGPC products, even those claiming refunds below the small claims threshold, were not injured by the alleged overcharges. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of MGPC product at increased prices unless they were able to pass through the full amount of the overcharges to their own customers. See *Vickers*, 8 DOE at 898,396-7. Accordingly, any spot purchaser claimant must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured by the spot purchase(s).⁴

³ Applicants are only eligible to receive refunds based upon NGLs and NGLPs purchased during the period in which each product was subject to Federal price controls. Therefore, an applicant will not be eligible to receive a refund based upon butane and natural gasoline purchased after December 31, 1979, or ethane purchased after March 31, 1974. See *Gulf Oil Corp./E.I. du Pont de Nemours*, 14 DOE ¶ 85,027 (1986). In addition, although the consent order period begins January 1, 1973, the relevant period for the determination of refunds begins June 13, 1973, the effective date of the Cost of Living Council Freeze Regulations, 38 FR 15768 (June 15, 1973).

⁴ In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases; and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. See *Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

C. Calculation of Refund Amounts. We propose to use a volumetric method to apportion the MGPC escrow account. This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of NGLs and NGLPs sold by MGPC during the regulatory period. Use of this presumption promotes efficiency, both for the applicants preparing claims and for the agency, and, in the absence of better information, it is reasonable because the DOE price regulations generally require a regulated firm to account for increased costs on a firm-wide basis in determining its prices.⁵

Under the volumetric approach, a claimant will be eligible to receive a refund equal to the number of gallons of MGPC NGLs and NGLPs that it purchased during the period June 13, 1973 through the appropriate date of decontrol of each product multiplied by \$0.00133, the per gallon volumetric refund amount for this proceeding. We derived this figure by dividing the \$715,420.48 received from MGPC by the total volume of NGLs and NGLPs sold by the firm during the regulatory period.⁶ In addition, a portion of the interest which has accrued on the consent order fund since its remittance to the DOE will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of \$15 or less outweighs the benefits of restitution in those situations. See *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

IV. Distribution of Funds Remaining after Consideration of All Refund Applications

We propose that any funds that remain after all refund applications have been decided be distributed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA), 15 U.S.C.A.

⁵ Because we realize that the impact on an individual claimant may have been greater than its full volumetric share, a claimant may submit evidence detailing the specific overcharge that it allegedly incurred in order to be eligible for a larger refund. See *Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

⁶ Based upon the information contained in the MGPC audit file, we estimate that the firm sold approximately 536 million gallons of NGLs and NGLPs in the period during which each of those products was controlled. We arrived at this estimate by extrapolating detailed sales volume information compiled by the ERA during its audit of MGPC. According to MGPC, MGPC's sales volumes during the audit period are representative of the firm's sales volume throughout the entire consent order period.

§§ 4501-4507. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA § 4502 (c) and (d). The Secretary has delegated these responsibilities to the OHA, and any funds in the MGPC consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured MGPC customers will be distributed in accordance with the provisions of PODRA.

V. Applications For Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before distributing any of the funds received pursuant to the MGPC consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the Federal Register.

It is Therefore Ordered That:

The consent order fund remitted to the Department of Energy by MCO Holdings, Inc. and MGPC, Inc. pursuant to Consent Order No. 831V00016, effective September 11, 1986, will be distributed in accordance with the foregoing Decision.

Appendix—Identified Purchasers of MGPC, NGLs and NGLPs

Arrow Gas
Atlantic Richfield Co.
Black Hills Oil Marketers
Butane Power & Equipment
California Liquid Gas Corp. (Cal Gas)
Continental Oil Co.
Farmers Union Central Exchange, Inc.
Fuel Distributors
Hidogas, Ltd.
Kasberg Butane
McPherson Propane
Murphy Oil Co.
Montana-Dakota Utilities Co.
Petrolane
Ram Gas
Richards Butane
Sheridan Propane
Wanda Petroleum Co.
Western Crude Oil Company

[FR Doc. 88-13694 Filed 6-16-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3399-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared May 30, Through June 3, 1988

Availability of EPA comments prepared May 30, 1988 through June 3, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in *Federal Register*, dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D-AFS-L65121-OR, Rating EC2, Mount Hood National Forest, Land and Resource Management Plan, Implementation, Clackamas, Hood River, Jefferson, Marion, Multnomah, and Wasco Counties, OR.

Summary: EPA's major concern with this document is that the level of detail and commitment for water quality monitoring and feedback mechanisms are not commensurate with the sensitivity of the resources.

ERP No. D-COE-F36154-OH, Rating EC2, Swan Creek Local Flood Protection Project, Implementation, Heatherdale-Lemond Drive Area, Lucas County, OH.

Summary: EPA has concerns regarding the lack of information on the existing environmental conditions, the adverse impacts associated with the project, and mitigation of the adverse impacts. Additional information such as structural and non-structural alternatives, water quality, and the biological characteristics of the proposed project area should be provided in the final EIS and then be used in the selection of an alternative. If adverse impacts cannot be avoided, then mitigation should be included as part of the project plan.

ERP No. D-FHW-D40715-VA, Rating EC2, U.S. 288 Construction, U.S. 360/Hull Street to I-64, Funding, sections 10 and 404 and Coast Guard Permits, Chesterfield, Henrico, Goochland, and Powhatan Counties, VA.

Summary: EPA has concerns regarding the consistency of the western alternatives with local land use plans and the secondary impacts that may

result from these alternatives.

Alternative 9 (the eastern alignment) is the shortest, most direct alternative and is consistent with local land use plans. It would also have the fewest impacts to the natural environment (wetlands, forested areas agricultural lands, and Swift Creek Reservoir), but would cause the greatest disturbance to existing residential communities.

ERP No. D-FHW-L40162-OR, Rating EC2, Mill Creek/West Sixth Street Bridge Replacement, Funding, The Dalles, Wasco County, OR.

Summary: EPA's environmental concerns are based on the potential impacts from the removal of the existing bridge and underground storage tanks. The final EIS needs to address the methods that will be used to remove the existing bridge and dispose of the resulting debris, and provide details on the removal methods to be used for the underground storage tanks.

Final EISs

ERP No. F-AFS-K61090-CA, Gallatin Marina (Formerly Eagle Lake Marina) Future Development Policy, Approval, Special Use and 404 Permits, Lassen National Forest, Lassen County, CA.

Summary: EPA reviewed the final EIS and Record of Decision and has no formal comments to offer.

ERP No. F-COE-C32033-NJ, Port Jersey Channel Navigation Improvement Plan, Implementation, Port of New York and New Jersey, Bayonne and Jersey City, Hudson County, NJ.

Summary: EPA has no objections to the project as proposed if bioassay and bioaccumulation tests are conducted and reviewed to verify adequate sediment quality prior to construction.

ERP No. F-COE-L39045-AK, Chignik Small Boat Harbor Facility Development, Implementation, Anchorage Bay, AK.

Summary: EPA has environmental concerns about the staging area in the preferred alternative which would adversely affect freshwater wetlands. EPA presented an alternate environmentally preferable design for the staging area and recommended that the Record of Decision specify that the final float system be designed to accommodate the alternative staging area design to ensure compliance with the section 404(b)(1) Guidelines.

ERP No. F-FHW-J40115-ND, Columbia Road Overpass Widening, Gateway Drive to 32nd Avenue South, Funding, Grand Forks County, ND.

Summary: The final EIS has selected the Preferred Alternative from the draft EIS. EPA concurs that the project can be constructed and operated with acceptable impacts to the environment.

Note: The above summary should have appeared in the June 10, 1988 FR Notice.)

ERP No. F-VAD-K99022-CA, Northern California Veteran Administration, National Cemetery Development, Alameda and Merced Counties, CA.

Summary: EPA reviewed the final EIS and has no formal comments to offer.

Dated: June 14, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-13787 Filed 6-16-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3399-3]

Availability of Environmental Impact Statements Filed June 6, 1988 Through June 10, 1988

EIS No. 880177, Final, COE, PR, Rio de la Plata Basin, Flood Protection Plan, Implementation, Dorado-Toa Baja Area, PR, Due: July 18, 1988, Contact: Handley Smith, (904) 791-2202.

EIS No. 880178, Draft, NPS, AK, Kobuk Valley National Park, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: Linda Nebel, (907) 257-2654.

EIS No. 880179, Draft, NPS, AK, Katmai National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: August 29, 1988, Contact: Linda Nebel, (907) 257-2654.

EIS No. 880180, DSUpl., COE, ID, WA, Lower Granite Project, Lower Granite Interim Navigation and Flood Protection Dredging, Implementation, Snake and Clearwater Rivers, Nez Perce County, ID and Asotin, Garfield and Whitman Counties, WA, Due: August 1, 1988, Contact: Robert Palmer, (509) 522-6927.

EIS No. 880181, Final, FHW, MD, MD-28 Improvements, MD-124 to I-270 Funding and 404 Permit, Montgomery County, MD, Due: July 18, 1988, Contact: Edward Terry, (301) 962-4010.

EIS No. 880182, Final, NRC, REG, Decommissioning of Nuclear Facilities, Implementation, Due: July 18, 1988, Contact: Carl Feldman, (301) 492-3883.

EIS No. 880183, Final, FHW, OR, US 101/Oregon Coast Highway Improvements, Rouge River Bridge to Gold Beach, Funding, Curry County, OR, Due: July 18, 1988, Contact: Dale Wilken, (503) 399-5749.

EIS No. 880184, Final, COE, CA, Tierrasanta Community (formerly Camp Elliott) Remedial Action Alternatives for Conventional

Explosive Ordnance Items, San Diego County, CA, Due: July 18, 1988,

Contact: Eugene Miller, (205) 895-5370.

EIS No. 880185, Draft, SCS, MS, Town Creek Watershed Flood Protection Plan, Funding and Implementation, Lee, Pontotoc, Prentiss and Union Counties, MS, Due: August 1, 1988, Contact: L. Pete Heard, (601) 965-5205.

EIS No. 880186, FSUpl, SFW, REG, Sport Hunting of Migratory Birds, Issuance of Regulations, Due: July 18, 1988, Contact: Rollin D. Sparrowe, (202) 254-3207.

EIS No. 880187, Draft, USN, NC, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R-5306A Establishment, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC, Due: August 1, 1988, Contact: Charles H. Maguire, (804) 445-2307.

EIS No. 880188, Draft, BLM, NV, Nevada Contiguous Lands Wilderness Recommendations, Designation or Nondesignation, Clark, Lincoln, White Pine and Humboldt Counties, NV, Due: September 8, 1988, Contact: Janaye Byergo, (702) 388-6403.

Dated: June 14, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-13786 Filed 6-16-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training, Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: August 31—September 1, 1988.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: August 31—9:00 a.m. to 5:00 p.m.; September 1—9:00 a.m. to completion.

Proposed Agenda: Approval of May, 1988, Minutes; Old Business, New Business; Briefing of FY89 Operating Plan.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy Office of Training, 16825 South Seton

Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1123) on or before August 15, 1988.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: June 8, 1988.

John B. K. La Barre,
Director, Office of Training.

[FR Doc. 88-13707 Filed 6-16-88; 8:45 am]
BILLING CODE 6718-21-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-467]

Agency Information Collection Activities Under OMB Review; Application for Additional Equity Risk Investment Authorization

Date: June 13, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Application for Additional Equity Risk Investment Authorization" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided on these applications will be used by the Bank Board to monitor the safety and soundness of savings and loan associations and to protect account holders. The board estimates that it will require 20 hours per application to complete.

DATES: Comments on the information collection request are welcome and should be received on or before July 5, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and

supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT:
Andrew Gilbert, Office of General Counsel, 202-337-6441, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-13735 Filed 6-16-88; 8:45 am]
BILLING CODE 6720-01-M

[No. 88-468]

Agency Information Collection Activities Under OMB Review; Criminal Referral Reporting/Recordkeeping Requirements

Date: June 13, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Criminal Referral Reporting/Recordkeeping Requirements" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided on this form will be used in investigations where criminal felonies are suspected. The Board estimates it will take each respondent an average of .32 hours to complete the form.

DATE: Comments on the information collection request are welcome and should be received on or before July 5, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal

Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT:
John Downing, Office of Enforcement, 202-653-2604, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-13734 Filed 6-16-88; 8:45 am]
BILLING CODE 6720-01-M

[No. 88-469]

Agency Information Collection Activities Under OMB Review; Industry Conflict of Interest Regulations

Date: June 13, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Industry Conflict of Interest Regulations" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This report is used by the principal Supervisory agents in deciding whether to approve an insured institution or subsidiary may engage in certain transactions with affiliated persons. The Bank Board estimates that each response will require 10 hours.

DATES: Comments on the information collection request are welcome and should be received on or before July 5, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT:
Steve Gray, Office of General Counsel,
202-337-7506, Federal Home Loan Bank
Board, 1700 G Street, NW., Washington,
DC 20552.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-13732 Filed 6-16-88; 8:45 am]
BILLING CODE 6720-01-M

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 88-13733 Filed 6-16-88; 8:45 am]
BILLING CODE 6720-01-M

[No. 88-463]

**Power of Receiver and Conduct of
Receiverships; Financial Contracts**

Date: June 10, 1988.

AGENCY: Federal Home Loan Bank
Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is clarifying its position concerning the protections afforded to those entities dealing in securities contracts or commodities contracts, as defined in the Bankruptcy Code, with American Savings and Loan Association, Stockton, California ("American"). The Board wishes to make it clear that the protections given to securities dealers and others engaged in such contracts by amendments to the Bankruptcy Code also would be afforded to securities dealers and others engaged in such contracts with American.

EFFECTIVE DATE: June 10, 1988.

FOR FURTHER INFORMATION CONTACT:
Lawrence W. Hayes, Deputy General
Counsel for FSLIC, (202) 377-6428;
Michael Phillips, Attorney, (202) 377-
6755; or Chris J. Conanan, Attorney,
Office of General Counsel, (202) 377-
6638; Federal Home Loan Bank Board,
1700 G Street, NW., Washington, DC
20552.

SUPPLEMENTARY INFORMATION: The
Board has adopted the following
resolution:

Whereas, the Federal Home Loan Bank Board ("Board") has considered the particular importance of Financial Contracts (as defined below) in providing for the management of risk by, and facilitating liquidity and funding for, American Savings and Loan Association, a California chartered institution ("American"), the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"), and the potential disruption to the markets in such Financial Contracts that could arise as a result of a receivership, conservatorship, or similar proceeding with respect to American, which disruption could have additional negative effects on the financial integrity and liquidity of the markets in such Financial Contracts and on other FSLIC insured institutions, institutions

chartered by the Board, and other participants in the markets for such Financial Contracts; and

Whereas, the Board as operating head of the FSLIC has decided, pursuant to its powers under section 5(d)(11) of the Home Owners Loan Act of 1933, as amended, and section 406(c)(3) of the National Housing Act, as amended, to adopt the following resolutions.

Now, Therefore, the Board resolves as follows:

1. Notwithstanding any other provision of law, regulations or these resolutions (but subject to paragraph 2 hereof), in the absence of fraud on the part of a Counterparty to a Financial Contract, neither the Board, the FSLIC, nor other entity under the direction of the Board, as receiver, conservator or similar official for American or for any Successor (the "Receiver"), shall attempt to stay, avoid, or otherwise limit the exercise by a Counterparty of its contractual rights arising from the appointment of the Receiver, to liquidate a Financial Contract and exercise all of its rights and remedies thereunder (including, without limitation, its contractual rights to accelerate the purchase, sale, delivery, and other obligations of American or a Successor thereunder, to terminate its obligations thereunder, to exercise its rights of set-off thereunder, and to liquidate, foreclose, draw under, or apply (including by way of setoff) any Financial Contract Margin and Interest Collateral). As used in these resolutions, the terms "contractual right" and "right" include, without limitation, a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

2. (a) The Board does not hereby intend to approve or countenance or inhibit the Receiver or a Successor from staying or attempting to stay the exercise by a Counterparty of such contractual rights under Financial Contracts assumed in an Assumption Transaction. (b) The Receiver shall not transfer in an Assumption Transaction a Commodity Contract or, except for any excess remaining after liquidation thereof, any Financial Contract Margin securing such Commodity Contract, if applicable Regulatory Authorities by rule or specific action: (i) Do not permit an assumption and transfer thereof or (ii) require the liquidation thereof by the Counterparty in connection with such Assumption Transaction. (c) In the case of any Financial Contract with a Counterparty, if the liabilities under Financial Contracts and Repos with such Counterparty are assumed in an

[No. 88-470]

**Agency Information Collection
Activities Under OMB Review; Savings
and Loan Holding Company Reports**

Date: June 13, 1988.

AGENCY: Federal Home Loan Bank
Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Savings and Loan Holding Company Reports" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

These reports determine a holding company's adherence to the statutes, regulations and rules governing savings and loan holding companies.

DATE: Comments on the information collection request are welcome and should be received on or before July 5, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT:
Scott Albinson, Office of Regulatory Policy Oversight and Supervision, 202-778-2576, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

Assumption Transaction by different Successors, the terms of the Assumption Transaction shall be such as to preserve fully pre-existing contractual rights of set-off and cross collateralization.

3. The Board commits that it shall use its powers under the National Housing Act to ensure that any receivership (and to the fullest extent permitted by law, any conservatorship or similar proceeding) with respect to American or any Successor that is an institution the accounts of which are insured by the FSLIC shall be conducted solely by the FSLIC as receiver, conservator or similar official under federal law and regulations, Board Resolutions 84-572 and 88-149, and these resolutions.

4. The Receiver will perform all of American's or a Successor's obligations under Financial Contracts outstanding at the time of its appointment as Receiver for American or such Successor, as the case may be, according to their then existing terms and conditions (including payment, margin maintenance, settlement, delivery, and exercise terms), and the Receiver will perform all obligations under any New Financial Contracts in accordance with their terms and conditions.

5. The Board and the Receiver shall use their best efforts to cause the Federal Home Loan Banks to make necessary purchases from, or loans to, the Receiver, to enable the Receiver to perform the obligations under Financial Contracts and New Financial Contracts to the extent necessary to maintain an orderly market in the applicable Financial Contracts and New Financial Contracts and in Financial Contract Margin and Interest Collateral.

6. In the event that the Receiver does not perform all obligations under Financial Contracts or New Financial Contracts or in the event of a Cross-Default, a Counterparty to a Financial Contract or a New Financial Contract shall have the right to liquidate such Financial Contracts and New Financial Contracts and to exercise all of its rights and remedies thereunder (including, without limitation, the right to accelerate the purchase, sale, delivery and/or other obligations thereunder (without notice to the Receiver), to terminate its obligations thereunder, to exercise its rights of set-off (including against Repo Assets) thereunder, to liquidate, foreclose, draw under, or apply (including by way of set-off) and Financial Contract Margin and Interest Collateral, to liquidate any unaccelerated Financial Contracts or New Financial Contracts to satisfy such accelerated obligations, and to require

the deposit of additional Financial Contract Margin or Interest Collateral).

7. The failure or delay of a Counterparty to exercise any of its rights or remedies upon a failure to perform or any other default under a Financial Contract or New Financial Contract or upon a Cross-Default shall not constitute a waiver of any rights or remedies in connection therewith.

8. In connection with the exercise by a Counterparty to a Financial Contract or new Financial Contract of any remedies upon a failure to perform or, except in the case of contracts assumed in an Assumption Transaction, any other default under a Financial Contract or a New Financial Contract, or upon a Cross-Default, neither the Board nor the Receiver shall object to or seek to oppose or stay such exercise or assert or seek to assert any adverse claims (including stop-transfer institutions) against Financial Contract Margin, Interest Collateral, or Repo Assets or any holder or transferee thereof in connection therewith.

9. The Receiver may enforce its claim to any excess received by a Counterparty upon the exercise of its remedies in connection with Financial Contracts or New Financial Contracts over the aggregate amounts payable by American, a Successor, or the Receiver with respect to such Financial Contracts and New Financial Contracts (including interest to the date of liquidation of any Financial Contract Margin or Interest Collateral and reasonable expenses of Liquidation); *provided, however*, that nothing contained herein shall be construed to limit any set-off or liquidation rights described herein or in Board Resolution No. 88-149 published in the *Federal Register* at 53 FR 7800 (March 10, 1988) that a Counterparty shall have against any such excess.

10. Notwithstanding any provision of law or regulation, neither the Board nor the Receiver shall seek to avoid or recover any payment or transfer of Financial Contract Margin, Interest Collateral, Repo Assets or other funds or interests (tangible or intangible) made in connection with any Financial Contract or New Financial Contract or the liquidation therefor as a preferential transfer or fraudulent conveyance (other than any fraudulent conveyance made by American or a Successor, as the case may be, voluntarily or involuntarily, with actual intent to hinder, delay or defraud its creditors; *provided, however*, that any transferee of such a transfer that takes for value and in good faith has a lien on or may retain any interests transferred, and shall not be subject to a fraudulent conveyance claim in respect

of such transfer, in each case to the extent that such transferee gave value to American, the Receiver or such Successor, as the case may be, in exchange for such transfer; *provided further*, that in no event shall the Board or the Receiver make any such fraudulent conveyance claim against any Interest Collateral, Financial Contract Margin or Repo Assets; and it is the intention of the Board in the case of Commodity Contracts that the Receiver shall not seek to avoid a transfer of such funds or interests or the liquidation thereof if a trustee in bankruptcy would be unable to avoid such a transfer or liquidation pursuant to the Bankruptcy Code).

11. Nothing herein shall limit the power of the Board or the Receiver to make a claim against a Counterparty (but not Financial Contract Margin, Interest Collateral or Repo Assets) based on such Counterparty's fraud or failure to liquidate Financial Contract Margin or Interest Collateral in a commercially reasonable manner. In light of the substantial volume of American's Financial Contracts, the Board hereby confirms that liquidation of Financial Contract Margin or Interest Collateral over or at any time during a period not in excess of 90 days from the date of termination of a Financial Contract or New Financial Contract, would constitute a liquidation of Financial Contract Margin or Interest Collateral in a commercially reasonable time, and that Counterparties shall be entitled (but in the case of a Financial Contract that is not a New Financial Contract, only from the proceeds of liquidation of Financial Contract Margin or Interest Collateral or by way of set-off (including set-off against Repo Assets)) to interest, at the rate set forth in any Financial Contract or New Financial Contract accruing during such period; *provided, however*, that a liquidation of Financial Contract Margin or Interest Collateral at any point after such period shall not in and of itself constitute a commercially unreasonable time.

12. In connection with any Financial Contracts or New Financial Contracts, the Board and the FSLIC, in its corporate capacity, each irrevocably waives compliance by Counterparties with the FSLIC right of notice and purchase (12 CFR 563.8-2) and the contractual language required thereby, if applicable to any Financial Contract Margin or Interest Collateral (or any set-off against Repo Assets).

13. Neither the Board nor the Receiver shall stay or seek to stay the liquidation by, or pursuant to any requirement of, a

board of trade or an organization that clears Commodity Contracts on a board of trade, pursuant to such board of trade's or organization's rules, of Commodity Contracts with a clearing member of such board of trade or organization.

14. In recognition of the reliance Counterparties place and will place on these resolutions in maintaining in effect, and continuing to enter into, Financial Contracts with American, the Board intends itself, the FSLIC, in its corporate capacity, and the Receiver to be bound by these resolutions, and will not amend or rescind them without appropriate public notice of at least 45 days, and any such amendment or rescission shall operate only with respect to Financial Contracts or New Financial Contracts entered into more than four (4) days after publication thereof.

15. For purposes of these resolutions, defined terms used herein have the meanings set forth below:

"Assumption Transaction" means a transaction in which, immediately following the Receiver's taking of possession of American or a Successor, all unsubordinated creditor liabilities (including liabilities under Financial Contracts and Repos) of American or such Successor, as the case may be, are fully assumed by a Successor or Successors (in the case of American) or another Successor or Successors (in the case of such Successor), pursuant to contract with the Receiver. For purposes of this definition, "fully assumed" means that the Successor or Successors agree to perform the liabilities assumed by such Successor or Successors in accordance with the terms of the contract or contracts evidencing such liabilities and agree that in the event of non-performance thereof, such Successor or Successors shall be subject to the exercise of all contractual rights thereunder.

"CFTC" means the Commodity Futures Trading Commission.

"Commodity Act" means the Commodity Exchange Act 7 U.S.C. 1 et seq.

"Commodity Contracts" means futures contracts and options on futures contracts of a kind that are approved for use by American by the Board or the Executive Director, Office of Regulatory Activities, or a designee of the Executive Director ("Director"), and the Board hereby approves for use by American (a) the futures contracts listed below that are executed or cleared on a board of trade listed below, and (b) options on such futures contracts:

Board of Trade	Futures
Board of Trade of City of Chicago; Chicago Mercantile Exchange (including the International Monetary Market).	U.S. Treasury Bonds, U.S. Treasury Notes U.S. Treasury Bills Eurodollars

The withdrawal by the Board or the Director of approval for use by American of a kind of Commodity Contract previously approved by the Board or the Director shall constitute a rescission or amendment by the Board for the purpose of paragraph 14.

"Counterparty" means:

(a) As to a Financial Contract or New Financial Contract that is a Commodity Contract, a Futures Commission Merchant that clears or carries Commodity Contracts accounts or positions for American, the Receiver, or a Successor and, if American, the Receiver, or a Successor is obligated to take or make delivery of the assets underlying a Commodity Contract, the party obligated to make or take such delivery to or from American, the receiver, or such Successor; and

(b) As to a Financial Contract other than a Commodity Contract, a contractual counterparty to such Financial Contract that is a registered broker-dealer (including a registered government securities broker-dealer) or an affiliate thereof, the Federal Home Loan Mortgage Corporation, or (but only in the case of a Securities Contract not relating to whole loans or interests therein or an Interest Rate Agreement) a Federal Home Loan Bank.

"Cross-Default" means, as to any Counterparty to a Financial Contract or New Financial Contract, (a) the failure by American or the Receiver to perform any payment, margin, exercise or delivery obligation under a Financial Contract or New Financial Contract to any other Counterparty when due; (b) the failure by American or the Receiver to make any payment of funds or delivery of additional Repo Assets under any Repo or New Repo when due; or (c) any Regulatory Authority requires such Counterparty or any other Counterparty to liquidate a Financial Contract or New Financial Contract based on the financial condition of, or the appointment of the Receiver for, American or a Successor.

"FDIC" means the Federal Deposit Insurance Corporation.

"Financial Contract" means any Commodity Contract, Interest Rate Agreement or Securities Contract of American; provided, however, that such Financial Contract does not include any Commodity Contract, Interest Rate

Agreement or Securities Contract entered into by a Successor other than in connection with its assumption of liabilities thereunder in an Assumption Transaction.

"Financial Contract Margin" means "cash collateral", "margin payments" or "settlement payments", each as defined in applicable sections of the Bankruptcy Code, including any and all cash, securities and other property (including any credit balance or tangible or intangible interest), wherever located, that is held, payable or deliverable by any person or entity in connection with a Financial Contract or New Financial Contract (other than an Interest Rate Agreement) to which American, the Receiver, a Successor or a Counterparty to a Commodity Contract is a party.

"Futures Commission Merchant" has the meaning set forth in the Commodity Act.

"Interest Collateral" means any and all cash, securities, or other property securing the performance by American, the Receiver, or a Successor of its obligations with respect to any Financial Contract or New Financial Contract that is an Interest Rate Agreement or any other credit support (including a letter of credit) intended to assure the performance by American, the Receiver, or a Successor of its obligations with respect to such an Interest Rate Agreement.

"Interest Rate Agreement" means a contractual agreement between American, the Receiver or a Successor and a Counterparty whereby (a) such parties exchange payments during a predetermined period based on designated interest rates and notional principal amounts; (b) one party makes payments to the other party when a designated market interest rate goes above a ceiling (or cap) rate; (c) one party makes payments to the other party when a designated market interest rate goes above a ceiling (or cap) rate and such other party makes payments to the first party when the designated market interest rate goes below a floor rate; or (d) one party makes payments to the other party when a designated market interest rate goes below a predetermined floor rate, or any combination of the foregoing, and such other interest rate agreements as the Board shall by resolution determine.

"New Financial Contract" means a Commodity Contract, Securities Contract, or Interest Rate Agreement entered into by the Receiver for American (but not the Receiver for a Successor) other than by virtue of its succession, by operation of law, to such Contracts or Agreements entered into by

American or a Successor as the case may be.

"Regulatory Authority" means a national securities exchange, a national securities association, a securities clearing agency, an organization that clears Financial Contracts, a board of trade listed under the definition of Commodity Contract herein on which the futures contracts listed in the definition of Commodity Contract herein are executed or cleared, the CFTC, the Securities and Exchange Commission, the National Association of Securities Dealers, and the National Futures Association.

"Repo", "Repo Assets" and "New Repo" shall have the meanings set forth in Board Resolution No. 88-149.

"Security" means a security issued or guaranteed by the United States Treasury, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, a whole mortgage loan or interest therein, or any "mortgage-related security" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), but does not include an index of securities.

"Securities Contract" means a contract with American, the Receiver, or a Successor for the present or future purchase or sale of a Security, an over-the-counter option on a Security other than on a security issued by the United States Treasury, and an over-the-counter option on a security issued by the United States Treasury if and only if the Counterparty to such option is a broker dealer or government securities dealer in each case registered under the Securities Exchange Act of 1934, as amended, and in each case designated as a "primary dealer" by the Federal Reserve Bank of New York, and such other securities contracts as the Board shall by resolution determine.

"Successor" means an institution the accounts of which are insured by the FSLIC, the FSLIC in its corporate capacity, or a bank (including a federally chartered savings bank) the deposits of which are insured by the FDIC, in each case that is a party to an Assumption Transaction.

16. Nothing herein shall amend or rescind Board Resolution No. 88-149, and, notwithstanding certain similarities between these resolutions and Board Resolutions 84-572 and 88-149, these resolutions shall not be construed or interpreted in light of Board Resolutions 84-572 and 88-149, and Board Resolutions 84-572 and 88-149 shall not be construed or interpreted in light of these resolutions.

Resolved further, that these resolutions shall be effective immediately upon their adoption by the Board.

Resolved further, that the Secretary of the Board shall forward this resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-13736 Filed 6-16-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Correction

In the matter of an agreement between the Port of Oakland and American President Lines, Ltd. Agreement No. 224-002605-003, correction.

The Federal Register Notice published on May 27, 1988, (53, FR 19336), incorrectly identified the above agreement as Agreement No. 224-002605-003. The agreement should have been noticed as Agreement No. 224-002605-001.

By Order of the Federal Maritime Commission.

Dated: June 14, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-13737 Filed 6-16-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000050-052.

Title: Pacific Coast/Australia-New Zealand Tariff Bureau.

Parties:

Columbus Line

Associated Container Transportation

(Australia), Ltd.

Pacific Australia Direct Line

Blue Star Line, Ltd.

Australia-New Zealand Direct Line

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-003103-092.

Title: Japan-Atlantic and Gulf Freight Conference.

Parties:

Barber Blue Sea

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

A.P. Moller-Maersk Line

Neptune Orient Lines Limited

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-000150-089.

Title: Trans Pacific Freight Conference of Japan.

Parties:

American President Lines, Ltd.

Barber Blue Sea

Japan Lines, Ltd.

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-008190-020.

Title: Japan-Puerto Rico and Virgin Islands Freight Conference.

Parties:

Japan Line, Ltd.

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-009238-019.

Title: Greece Westbound Conference.

Parties:

Farrell Lines, Inc.

Sea-Land Service, Inc.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-009831-009.

Title: New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement.

Parties:

Associated Container Transportation

(Australia) Ltd.

Columbus Line

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010012-014.

Title: Australis-Pacific Coast Rate Agreement.

Parties:

Pacific Australia Direct Line
Australia Container Transportation
(Australia) Ltd.
Columbus Line

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 203-010099-004.

Title: International Council of Containership Operators.

Parties:

Trans Freight Lines
United States Line, Inc.
Lykes Bros. Steamship Co., Inc.
Atlantic Container Line Service, Ltd.
Koninklijke Nedlloyd Groep N.V.
Sea-Land Service, Inc.
The Australian National Line
P & O Containers Ltd.
Hapag-Lloyd AG
A.P. Moller (Maersk Line)
Societa Finanziaria Marittima
(Finmare)
Ben Line Containers Ltd.
Compagnie Generale Maritime
Transportacion Maritima Mexicana
United Arab Shipping Company
(S.A.G.)
American President Lines, Ltd.
Mitsui OSK Lines, Ltd.
Transatlantic Shipping Co., Ltd.
Columbus Line
Orient Overseas Line Ltd.
Wilh. Wilhelmsen
Nippon Yusen Kaisha
Blue Star Line Ltd.
Compagnie Maritime Belge S.A.
Neptune Orient Lines Ltd.
The East Asiatic Company Ltd. A/S
Crowley Maritime Corporation
South African Marine Corp. Ltd.

Synopsis: The proposed amendment would delete Trans Freight Lines and United States Lines, Inc. as parties to the agreement and would make other non-substantive changes.

Agreement No.: 202-010252-006.

Title: New Zealand-Pacific Coast Rate Agreement.

Parties:

Columbus Lines
Blue Star Line, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202-010636-042.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would further clarify the parties' authority regarding open and closed rates.

Agreement No.: 202-010637-030.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line B.V.
Hapag-Lloyd AG
Sea-Land Service, Inc.
Nedlloyd Lijnen, B.V.
Gulf Container Line (GCL), B.V.
P&O Containers (TFL) Limited
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would further clarify the parties' authority regarding open and closed rates.

Agreement No.: 202-010833-011.

Title: Eurocorde-I.

Parties:

North Europe-U.S. Atlantic Conference
U.S. Atlantic-North Europe Conference
Polish Ocean Lines
American Transport Lines Ltd.
Topgallant Group, Inc.
South Atlantic Cargo Shipping
(Atlanticargo N.V.)
Mediterranean Shipping Co., S.A.
Dart-ML Limited
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would further clarify the parties' authority regarding European inland transportation of cargo shipments within the scope of the agreement.

Agreement No.: 202-010984-002.

Title: Mediterranean-Puerto Rican Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Nordana Line/Danneborg Rederi A/S
Sea-Land Service, Inc.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 203-011147-002.

Title: Greece/U.S. Stabilization Agreement.

Parties:

Greece/U.S. Atlantic & Gulf Conference

Ocean Star Container Services, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commissions' requirements concerning service contract provisions.

Agreement No.: 203-011160-001.

Title: Agreement No. 11160.

Parties:

Atlantic Container Line, BV
Compagnie Generale Maritime
n.v. CMB s.a.
Dart-ML, Ltd.
Gulf Container Line (GCL) BV
Hapag-Lloyd AG
Johnson Scanstar
Nedlloyd Lijnen B.V.
Pacific Europe Express
P & OCL (Trans Freight Lines) Limited
Polish Ocean Lines
Sea-Land Service, Inc.
South Atlantic Cargo Shipping NV

Synopsis: The proposed amendment would modify the agreement to correspond with the neutral body provisions set forth in the U.S. Atlantic-North Europe Conference (FMC, No. 202-010636-041).

By order of the Federal Maritime Commission.

Dated: June 13, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-13667 Filed 6-16-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200126.

Title: Port of San Francisco Revenue Sharing Agreement.

Parties:

City and County of San Francisco (City), Associated Container Transportation, Blue Star Line, Inc., Columbus Line, Inc. (collectively, Lines).

Synopsis: The agreement provides that the Lines shall receive reduced dockage and wharfage and shall share in demurrage charges in return for their agreement to utilize San Francisco as their published, regularly scheduled port of call.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: June 13, 1988.

[FR Doc. 88-13668 Filed 6-16-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 10, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer

Nancy Steele, Division of Research and Statistics, Board of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer

Robert Neal, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report

Report Title: Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency Form Number: FR U-1.

OMB Docket Number: 7100-0115.

Frequency: Recordkeeping requirement.

Reporters: Commercial banks.

Annual Reporting Hours: 94,637.

Small businesses are affected.

General Description of Report: This information collection is mandatory (15 U.S.C. 78g, 78w) and is not given confidential treatment.

A purpose statement is required to be completed by a bank and its borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding \$100,000. The

statement is not filed with the Federal Reserve, but is a "record-keeping" form retained for a specified period by the lending bank. It is used to determine the purpose of the loan proceeds, to serve as an evidentiary tool to ascertain the intention of the parties involved, and to document the securities serving as collateral.

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Report

Report Title: National Survey of Small Business Finances.

Agency Form Number: FR 3044.

OMB Docket Number: 7100-0234.

Frequency: One-time survey.

Reporters: Small businesses.

Annual Reporting Hours: 2,125.

Small businesses are affected.

General Description of Report:

This information collection is voluntary (12 U.S.C. 1817(j), 1828(c), and 1841 *et seq.*) and is given partial confidential treatment (5 U.S.C. 552(b)(4)).

This one-time telephone survey of small businesses will be conducted between June and September 1988 by employees of a private contractor. The purposes of the survey are to provide an empirical basis for the definition of banking markets and to provide information on sources of funds for small businesses.

Board of Governors of the Federal Reserve System, June 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13701 Filed 6-16-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the list was published on June 10, 1988.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. Prospective evaluation of Health-care Workers Exposed to Blood from Patients infected with HIV—0920-0131—This project evaluates surveillance of health-care workers with potential exposure to blood fluids from patients with AIDS or AIDS related illnesses in an attempt to define the risk to health-care workers or contracting HIV infection. **Respondents:** Individuals or households. **Number of Respondents:** 300; **Frequency of Response:** Initial Interview and 4 follow-up Interviews; **Estimated Annual Burden:** 450 hours.

Office of the Assistant Secretary for Health

1. PHS Contractors Profile System—0937-0120—The PHS Contractor Profile System provides small and minority businesses and other organizations the opportunity to bid on PHS procurements. This system is mandated by Pub. L. 95-507. **Respondents:** Small business organizations. **Number of Respondents:** 02; **Frequency of Response:** Annually; **Estimated Annual Burden:** 800 hours.

Indian Health Services

1. IHS Medical Staff Credentials and Privileges File—NEW—Used to grant privileges to IHS medical staff members based on their qualifications, competency and performance. Includes: Physicians, dentists, psychologists, optometrists, podiatrists, audiologists and in some states, certified nurse midwives. **Respondents:** Individual households, state and local governments, business or other non-profit, federal agencies or employees, small business organizations; **Frequency of Response:** On occasion, annually; **Estimated Annual Burden:** 2,246 hours.

Alcohol, Drug Abuse, and Mental Health Administration

1. 1988 National Household Survey on Drug Abuse—0930-0110—The 1988 National Survey consists of personal interviews with approximately 8,000 respondents aged 12 years and older randomly selected from the household population of the coterminous 48 United States. Findings will provide prevalence and trend data for use by Federal and State agencies to evaluate present drug abuse control policies and to determine policy and strategy for education, treatment and prevention activities. **Respondents:** Individuals or households; **Number of Respondents:** 40,200; **Frequency of Response:** One; **Estimated Annual Burden:** 8,563 hours.

As mentioned above, copies of the information collection clearance

packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: Shannah Koss-McCallum.

Dated: June 14, 1988.

James E. Larson,

Acting, Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-13721 Filed 6-16-88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-08-4410-08]

Availability of Proposed Final Resource Management Plan/Environmental Impact Statement; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(2)(C) of the National Environmental Policy Act of 1969, a proposed final Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the West Hi-Line planning area. The RMP/EIS describes and analyzes future options for managing approximately 626,000 acres of public land and 1.3 million acres of Federal mineral estate in Glacier, Toole, Liberty, Hill, Chouteau, and Blaine Counties in north-central Montana. It also addresses the recreational management of public lands within the Upper Missouri National Wild and Scenic River Corridor in Fergus and Phillips Counties.

Decisions generated during this planning process will supersede land use planning guidance presented in the Triangle, South Bearpaw, and Blaine Management Framework Plans (MFPs) and land use guidance pertaining to the Upper Missouri National Wild and

Scenic River in the Phillips and Judith MFPs. The RMP/EIS incorporates land use decisions presented in the Prairie Potholes Vegetation Allocation EIS (1981), Missouri Breaks Grazing EIS (1979), the Missouri Breaks Wilderness Suitability Study/EIS (1982), and the Lewistown District Oil and Gas Environmental Assessment of Bureau of Land Management (BLM) Leasing Program.

Public Participation: The draft RMP/EIS was available for public review from June 5, 1987 to September 3, 1987. Written comments were received from agencies, organizations, and individuals. Oral comments were also received from persons attending six public meetings held in July 1987. All comments provided were considered during the preparation of the proposed final RMP/EIS.

Copies of the proposed final RMP/EIS are available for review in public libraries located throughout the planning area. Copies are also available from the Lewistown District Office, Airport Road, Lewistown, Montana 59457, phone 406-538-7461. Public reading copies are available for review at the following locations:

BLM, Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC 20240

BLM, Montana State Office, Public Assistance, 222 North 32nd Street, Billings, Montana 59101

BLM Lewistown District Office, Airport Road, Lewistown, Montana 59457

BLM Havre Resource Area, West Second Street, Havre, Montana 59501

BLM Great Falls Resource Area, 215 First Avenue, North, Great Falls, Montana 59403

BLM Phillips Resource Area, 501 South Second Street, East, Malta, Montana 59538.

Background information and maps used in developing the RMP/EIS are available at the Lewistown District Office and the Great Falls, Havre, Phillips, and Judith Resource Area Offices.

All parts of the proposed plan may be protested. Protests should be sent to the Director (760), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, within the 30-day protest period ending July 31, 1987. Protest statements should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest;

A statement of the issue or issues being protested;

A statement of the part or parts of the plan being protested;

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and

A concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period, the proposed plan, excluding any portions under protest, will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed. Any significant changes to the proposed plan made as a result of a protest will be made available for public review and comment prior to final approval and implementation.

FOR FURTHER INFORMATION CONTACT:

Ann Aldrich, Project Manager, Lewistown District Office, Airport Road, Lewistown, Montana 59457, 406-538-7461.

SUPPLEMENTARY INFORMATION: The proposed RMP/EIS analyzes four alternatives to resolve these five issues: land tenure adjustment; off-road vehicle management; right-of-way location; emphasis area management; and recreational management of the Upper Missouri National Wild and Scenic River. Each alternative represents a complete management plan for the area. The alternatives can be summarized as: (A) No action or continuation of current practices; (B) resource production; (C) resource protection; and (D) the preferred alternative, which is a balance of the previous three.

The RMP/EIS examines the designation of three areas as Areas of Critical Environmental Concern (ACEC). Management prescriptions for the areas vary by alternative and are described in the Emphasis Area sections of the RMP/EIS.

The proposed alternative would designate the Kevin Rim as an ACEC in order to protect historic peregrine habitat, habitat for other State and Federal special interest raptor species, and cultural resources. Oil and gas exploration and development and other surface disturbance would continue under more restrictive stipulations to protect the raptor and cultural resources. Off-road vehicle and right-of-way location restrictions would also be applied in the area.

The proposed alternative would also designate the Sweet Grass Hills as an ACEC in order to preserve resource values important for Native American religious and cultural practices, peregrine falcon and other sensitive

raptor habitat, public recreation, and winter elk habitat. Management in this area would include limitations on off-road vehicles; right-of-way location, including communication site location; more restrictive raptor stipulations for surface disturbing activities; and possible restrictions on surface developments to reduce conflicts with Native American religious and cultural practices.

The proposed alternative would also designate the Cow Creek area as an ACEC in order to protect and preserve the scenic, interpretive, recreational, and paleontological resources associated with the Nez Perce National Historic Trail, the Cow Island Trail. Such a designation would also protect the values associated with the overlapping Upper Missouri National Wild and Scenic River, the Lewis and Clark National Historic Trail, and the Cow Creek Wilderness Study Area (WSA). Management in this area would include limitations on off-road vehicles, right-of-way location, surface disturbance, and the use of riparian areas.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the *Federal Register* in December 1983. Since that time several open houses, public meetings, and mailouts were conducted to solicit comments and ideas. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs.

Marvin LeNoue,
State Director.

June 9, 1988.

[FR Doc. 88-13670 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-08-4332-09]

Availability of Wilderness Draft Environmental Impact Statement for Nevada Contiguous Lands in Ely, Las Vegas and Winnemucca Districts

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Nevada Contiguous Lands Wilderness Draft Environmental Impact Statement (DEIS) on proposed wilderness recommendations for the Ely, Las Vegas and Winnemucca Districts of Nevada.

SUMMARY: The DEIS assesses the environmental consequences of managing thirteen (13) WSAs and one (1) Instant Study Area (ISA) as wilderness or nonwilderness. The

management options analyzed include a range from all wilderness to no wilderness.

The names of the WSAs analyzed in the EIS, their total acreage and the proposed action for each are as follows:

WSA name	Acreage	Proposed action
Marble Canyon (NV-040-086).	19,150	Partial (8,300 ac.).
Fish & Wildlife #1 (NV-050-201).	11,090	No Wilderness.
Fish & Wildlife #2 (NV-050-216).	17,242	No Wilderness.
Fish & Wildlife #3 (NV-050-217).	22,002	No Wilderness.
Lime Canyon (NV-050-231).	34,680	Partial (13,895 ac.).
Million Hills (NV-050-233)....	21,296	No Wilderness.
Garrett Buttes (NV-050-235).	11,835	No Wilderness.
Quail Springs (NV-050-411).	12,145	No Wilderness.
El Dorado (NV-050-423).....	12,290	No Wilderness.
Iretaba Peaks (NV-050-438).	14,994	No Wilderness.
Jumbo Springs (NV-050-236).	3,466	No Wilderness.
Nellis ABC (NV-050-04R-15).	5,718	No Wilderness.
Evergreen ABC (NV-050-01R-16).	2,694	No Wilderness.
Lahontan Cutthroat Trout Natural Area (ISA).	12,316	No Wilderness.

DATES: The Bureau of Land Management is accepting comments on the accuracy and adequacy of the information and analysis in this DEIS through September 16, 1988. Public hearings concerning this draft have been scheduled for Wednesday, August 3, 1988 at 7:00 p.m. at the Clark County School District Auditorium, 2832 E. Flamingo Road, Las Vegas, Nevada and for Thursday, August 4, 1988 at 7:00 p.m. in the California Room of the Holiday Inn, 1000 E. 6th Street, Reno, Nevada.

ADDRESS: Testimony may be either written or oral. Written comments may be submitted at the hearing or to the following BLM offices: Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520; or Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, ATTN: Wilderness DEIS Team Leader.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the DEIS may be obtained from the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

Copies are also available for inspection at the following locations. Department of the Interior, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240; Bureau of Land Management, Nevada State Office 850 Harvard Way, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Janaye Byergo, EIS Team Leader, at the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126; or Linda Hansen, Wilderness Specialist, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

Date: June 7, 1988.

Fred Wolf,

Associate State Director, Nevada.

[FR Doc. 88-13436 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-HC-M

[NV-060-08-4321-12]

Helicopters and Motorized Vehicles Used in Gathering Wild Horses and Burros; Meetings

ACTION: Hearing notice: Use of helicopters and motorized vehicles to gather and transport excess wild horses and burros.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-195, as amended by Pub. L. 94-579 and Pub. L. 95-514, a public hearing will be held July 28, 1988. The public hearing will begin at 1:00 p.m. at the office of the Bureau of Land Management, North Second and Scott Streets, Battle Mountain, Nevada.

The intent of the hearing is to obtain public input for the indefinite future use of helicopters and motorized vehicles to gather and transport excess wild horses and burros. The area under consideration is the entire Battle Mountain District and those lands administered by the Battle Mountain District for the purpose of attaining and maintaining appropriate management levels of wild horses and burros as set forth in the Land Use Plan.

The hearing is open to the public. Interested persons may make oral statements to the hearing moderator or file written statements for management consideration. Anyone wishing to make oral or written statements should notify the District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820, by July 21, 1988. Telephone (702) 635-5181. Depending on the number of persons wishing to make oral statements, a per-

person time limit may be established by the hearing moderator.

SUPPLEMENTARY INFORMATION:

Summary minutes of the hearing will be maintained in the Battle Mountain District Office of the BLM and available for public inspection during regular business hours within 30 days following the date of the hearing.

Date: June 8, 1988.

Peter J. Keenan,

Acting District Manager, Battle Mountain.

[FR Doc. 88-13671 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-HC-M

[ID-040-4322-02]

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Salmon District Grazing Advisory Board.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held on Thursday, August 4, 1988, at the Salmon District Office, Bureau of Land Management, Conference Room, Highway 93 South, Salmon, Idaho 83467. The meeting will begin at 10:00 a.m.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The meeting is open to the public; public comments on agenda items will be accepted from 1:00 to 1:30 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by July 28, 1988.

The agenda items are (1) Election of Officers, (2) Wild Horses, (3) Allotment Management Plans, (4) Water Rights (5) Status of FY 88 Projects, (6) Project Requests, and (7) Any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:45 p.m.) within 30 days after the meeting.

For further information, contact Jerry W. Goodman, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467.

Dated: June 10, 1988.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 88-13672 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-GG-M

[OR-090-08-4212-13: GP8-164: OROR 44047]

Realty Action—Exchange; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 19 S., R. 1 E.,

Sec. 26: NW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 21 S., R. 1 W.,

Sec. 17 Lot 1.

T. 22 S., R. 1 W.,

Sec. 7: Lot 27.

T. 22 S., R. 2 W.,

Sec. 12: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 190.82 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from the Murphy Sales Company:

Willamette Meridian, Oregon

T. 17 S., R. 3 E.,

Sec. 10: Lots 3-5, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 154.79 acres in Lane County.

The purpose of the exchange is to bring into public ownership a parcel of land on the McKenzie River with important public values. The public lands to be exchanged are relatively isolated parcels without legal access for the general public. The private lands being offered have important scenic quality, recreation, wildlife habitat and timber values. These lands will be managed to preserve existing scenic qualities and, where compatible, for multiple use. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal and adjustments in the acreage or timber to be exchanged will be made in order to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All

mineral rights will be transferred with the surface.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation to the United States of a right-of-way for BLM road No. 22-2-12 across the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12, T. 22 S., R. 2 W., W.M.

The public land described above was segregated from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 by publication of a notice in the *Federal Register* on April 14, 1988 (53 FR 12476). The segregative effect of that notice will terminate upon issuance of patent or in two years from April 14, 1988, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange, including the environmental assessment, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issue: June 10, 1988.

Ronald L. Kaufman,

District Manager.

[FR Doc. 88-13767 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-33-M

[AK-932-08-4220-10; F-22388]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands

requested by the U.S. Army Corps of Engineers for use as a military communications facility.

EFFECTIVE DATE: June 17, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-3342.

SUPPLEMENTARY INFORMATION: Notice of a proposed withdrawal and reservation of lands for the U.S. Army Corps of Engineers, was published in the *Federal Register* on January 12, 1978 (43 FR 1840). The purpose of the application, serial number F-22388, was for use as a military communications facility. The Corps of Engineers has cancelled its application involving the following described lands:

Kateel River Meridian

Tract I

Commencing at the USC and GS monument Galena AZ. Mark, proceed N. 83°37'59" E. 3,053.65 feet, thence N. 89°31'07" E. 1,190.04 feet; thence N. 76°25'01" E. 766.44 feet; thence N. 37°52'30" E. 171.03 feet; thence N. 71°04'20" E. 2,816.08 feet, to the true point of beginning of this description being called corner "A".

Thence N. 71°04'20" E. 471.22 feet to corner "B"; Thence N. 18°55'40" W. 1,150.00 feet to corner "C"; Thence S. 71°04'20" W. 471.22 feet to corner "D"; Thence S. 18°55'40" E. 1,150.00 feet to the true point of beginning.

Containing approximately 12.44 acres.

Tract II

Commence at corner "B" of Tract I, proceed N. 71°04'20" E. 4,435.27 feet, thence S. 55°53'44" E. 766.89 feet, thence N. 86°28'21" E. 731.39 feet to the true point of beginning of this description, being called corner "E".

Thence N. 77°28'16" E. 46.10 feet to corner "F"; Thence S. 70°42'36" E. 317.84 feet to corner "G"; Thence N. 19°17'24" E. 760.00 feet to corner "H"; Thence N. 70°42'36" W. 357.01 feet to corner "J"; Thence S. 19°17'24" W. 784.31 feet to the true point of beginning.

Containing approximately 6.24 acres.

The two tracts described aggregate approximately 18.68 acres. At 8:00 a.m. Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the proposed withdrawal.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 88-13770 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5682, Block 140, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on June 9, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information

contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 10, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13673 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Denali National Park Subsistence Research Commission; Meeting.

AGENCY: National Park Service Alaska Region, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces the forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

- (1) Call to order.
- (2) Reading and approval of minutes.
- (3) Subsistence hunting plan.
- (4) Subsistence zones.
- (5) Update on rural and nonrural areas and effects on subsistence users.
- (6) Update on park and other plans that might affect subsistence.
- (7) Internal commission business.
- (8) Other business.
- (9) Adjourn.

DATE: The meeting will begin at 9:00 am on Friday, June 17, 1988 and conclude that afternoon or the morning of June 18 if needed.

ADDRESS: Denali National Park, Headquarters Recreational Hall.

FOR FURTHER INFORMATION CONTACT: Robert C. Cunningham, Superintendent, Denali National Park, P.O. Box 9, Denali National Park, Alaska 99755. Phone (907) 683-2294.

SUPPLEMENTARY INFORMATION: The Denali National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487. Although, this notice did not appear in the *Federal Register* 15 days prior to the meeting all interested parties were notified.

David B. Ames,

Acting Regional Director.

[FR Doc. 88-13669 Filed 6-16-88; 8:45am]

BILLING CODE 4310-70-M

**INTERNATIONAL DEVELOPMENT
COOPERATION AGENCY****Agency for International Development****Public Information Collection
Requirements Submitted to OMB for
Review**

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. The request is for generic clearance for those information collection instruments designed in A.I.D. Washington to be collected overseas. These categories of information collections, listed by sector, represent the typical project related requirements A.I.D. faces in reaching its operational goals. The respondents for each category will be indigenous persons of the less developed country and the frequency of the response will vary per collection. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875-1608, IRM/PE, Room 1100B, SA-14, Washington, DC 20523.

Date Submitted: June 10, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412-0525

Form Number: None

Type of Submission: Extension of Expiration Date

Title: Overseas Information Collections

Purpose: The Agency collects information for the design, implementation, and evaluation of project carried out in LDCs (less developed countries). This data represents collections that are specifically designed and collected within the country. These collections affect the inhabitants of the developing country in the development of its human and economic resources.

Date Submitted: June 10, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412-0526

Form Number: None

Type of Submission: Extension of Expiration Date

Title: Energy, Private and Voluntary Organizations, and Selected Development Activities (Data collections created in the U.S., but conducted in other countries)

Purpose: This type of data collection is used in follow up on LDC participants

trained in the U.S. under our programs to see how they are utilizing the information learned and the impact the training has had on the energy situation in a country. This type of data collection is also used to follow up on performance of equipment placed in an LDC.

Date Submitted: June 10, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412-0527

Form Number: None

Type of Submission: Extension of Expiration Date

Title: Agriculture, Rural Development and Nutrition

Purpose: The Science and Technology Bureau requires periodic sources of information on the social and economic conditions of agriculture, nutrition and rural areas of developing countries. Projects are then prepared and evaluated to provide technical and financial assistance in support of those countries' development programs.

Date Submitted: June 10, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412-0528

Form Number: None

Type of Submission: Extension of Expiration Date

Title: Health and Population Programs of A.I.D.

Purpose: A.I.D. collects a variety of health and population information throughout the developing world in order to provide information to policy makers and program administration, access health and family planning programs, and develop new ways to combat diseases and regulate fertility. Governments, private organizations and international specialized agencies (e.g., WHO) use this data.

Date Submitted: June 10, 1988

Submitting Agency: Agency for International Development

OMB Number: 0412-0529

Form Number: None

Type of Submission: Extension of Expiration Date

Title: Education and Human Resource Programs of A.I.D.

Purpose: A.I.D. collects a variety of education and training information throughout the developing world in order to provide information to policy makers and program administration; access formal and nonformal education programs; and develop new approaches to provide education and training to LDC (less developed countries) citizens. Governments, private organizations and international specialized agencies use this data.

Reviewer: Francine Picoult (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1988.

John H. Elgin,

Planning and Evaluation Division.

[FR Doc. 88-13765 Filed 6-16-88; 8:45 am]

BILLING CODE 6116-01-M

**INTERSTATE COMMERCE
COMMISSION****Intent To Engage in Compensated
Intercompany Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation:

Commercial Metals Company, 7800 Stemmons Freeway (75247), Post Office Box 1046 (75221), Dallas, Texas, State of Incorporation: Delaware

The following are divisions which will participate in the operation:

Karchmer Iron & Metal Company, 514 Washington, Springfield, Missouri 65806

Southwest Mesa Scrap Co., 2701 Second Street NW, Albuquerque, New Mexico 87107

CMC-Yarmuk Scrap Processing, 907 South Railroad, Lawton, Oklahoma 75301

The following 100% wholly-owned or controlled subsidiaries will participate in the operation:

CMC Process Products, Inc., 7800 Stemmons Freeway, Dallas, Texas 75247, State of Incorporation: Texas

CMC Steel, Inc., Mill Road, Seguin, Texas 78155, State of Incorporation: Texas

Capitol City Steel Company, 6717 Circle S Road, Austin, Texas 78745, State of Incorporation: Texas

Cometals, Inc., One Penn Plaza, Room 3401 New York, New York 10001, State of Incorporation: New York

Commercial Metals-Austin, Inc. 710 Industrial, P.O. Box 19169, Austin, Texas 78760-9169

Commercial Metals Railroad Salvage Company 7800 Stemmons Freeway, Dallas, Texas 75221, State of Incorporation: Texas

Commonwealth Metal Corporation, 560 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, State of Incorporation: New Jersey

Enterprise Metal Corporation, 175 Great Neck Road, Room 408, Great Neck New York 10021, State of Incorporation: New York

Howell Metal Company, State Route 728, P.O. Box 218, New Market, Virginia 22844, State of Incorporation: Virginia

SMI Steel Inc., P.O. Box 2875 A Birmingham, Alabama 35212, State of Incorporation: Alabama

Structural Metals, Inc., Mill Road, Seguin, Texas 78155, State of Incorporation: Texas

Texas Cold Finished Steel, Inc., 1300 Baker Houston, Texas 77002, State of Incorporation: Texas

CMC Steel Fabricators, Inc., State of Incorporation: Texas, Doing business under the following names:

SMI Steel-Arkansas, Kerlin Road, Box 1147, Magnolia, Arkansas 71753

Alamo Steel, Inc., Old Dallas Road, P.O. Box 86, Waco, Texas 76703

Capitol Steel, Inc., 2655 North Foster Drive P.O. Box 66636, Baton Rouge, Louisiana 70896

CoMet Steel, Inc., 4846 Singleton Boulevard, Dallas, Texas 75212

Houston Steel Service Company of Texas, Inc., 5321 Westpark Drive, Houston, Texas 77065

Houston Steel Service Company—Rebar Division, 5321 Westpark Drive, Houston, Texas 77065

Safety Railway Service Company Aloe Field, P.O. Box 2298, Victoria, Texas 77901

Safety steel Service, Inc., Rodd Field, P.O. Box 6546, Corpus Christi, Texas 78411

Safety Steel Service, Inc., 201 East Crestwood Drive, Victoria, Texas 77901

Safety Steel Construction, Inc., 201 East Crestwood Drive, P.O. Box 2298, Victoria, Texas 77901

Southern States Steel Company 9675 Walden Road, Beaumont, Texas 77706

Southern Farm Supply Company, 1318 Buschong Road, Houston, Texas 77093

Southern Fence Post Company 1318 Buschong Road, Houston, Texas 77093

Southern Post Company 1318 Buchong Road, Houston, Texas 77093

Southern Post Company, 1960 Benchmark Drive, Round Rock, Texas 78664

Safety Detention Systems, Inc., Victoria, Texas 77901

Southern Post Company, Kerlin Road, P.O. box 489, Magnolia, Arkansas 71753

Sterling Steel Company, 5600 Braxton, Suite 12, Houston, Texas 77036

1. Parent corporation and address of principal office: Grinnell Corporation, 3 Tyco Park, Exeter, NH 03833, Incorporated in Delaware.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation: Allied Tube & Conduit Corporation, 16100 S. Lathrop Avenue, Harvey, IL 60426, Incorporated in Delaware.

Noreta R. McGee,
Secretary.

[FR Doc. 88-13724 Filed 6-16-88; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 15; Finance Docket No. 32000 (Sub-Nos. 8 and 9)]

Atchison, Topeka and Santa Fe Railway Co.; Trackage Rights, Points and Places in Texas and Louisiana and Joint Use of Terminal Facilities in New Orleans, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 15.

SUMMARY: The Commission is accepting for consideration the application of the Atchison, Topeka and Santa Fe Railway Company (ATSF) for: (1) Direct access trackage rights over Southern Pacific Transportation Company (SPT) between Houston, TX and New Orleans, LA; (2) direct access trackage rights over the Kansas City Southern (KCS) Lake Charles branch, at and between Lake Charles and Mossville, LA; (3) bridge trackage rights over SPT between Rosenberg and Houston, TX; (4) direct access trackage rights over SPT between Beaumont and Port Arthur, TX; (5) direct access trackage rights over SPT between Dayton and Baytown, TX, between Houston and Barbour's Cut, TX via Harrisburg Jct. and Strang, and between Strang and Seabrook, TX; (6) bridge trackage rights over KCS between Farmersville, TX and Shreveport, LA, with direct access to all shippers and connecting railroads at Shreveport; and (7) joint use of terminal facilities owned by the City of New Orleans and operated by the New Orleans Public Belt Railroad (NOPB) at New Orleans, LA. These applications are responsive to the proposed acquisition of control of SPT by Kansas City Southern Industries, Inc. (KCSI).

DATES: Written comments and all evidence must be filed with the Interstate Commerce Commission by June 27, 1988. Briefs from all parties are due July 11, 1988. Oral argument will be held on July 27, 1988.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245

or
Tom Shick, (202) 275-7972. [TDD for hearing impaired: (202) 275-1721]

ADDRESSES: An original and 20 copies of all comments referring to Finance Docket No. 32000 (Sub-Nos. 8 or 9) should be filed with: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32000, Interstate Commerce Commission, Washington, DC 20423.

Five copies of all comments should also be sent to: Office of Proceedings, Room 2118, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: On May 9, 1988, KCSI and certain wholly-owned subsidiaries filed an inconsistent application to the primary application in Finance Docket No. 32000 and embraced cases, where Rio Grande Industries, Inc. (Rio Grande) and certain wholly-owned subsidiaries seek authority to acquire control of SPT and its carrier subsidiaries. By the inconsistent application, the KCSI parties seek control of SPT and its carrier subsidiaries. Notice of acceptance of the primary application filed by Rio Grande was published in the *Federal Register* on March 8, 1988, at 53 FR 7408. Notice of acceptance of the inconsistent application filed by KCSI was published in the *Federal Register* on May 24, 1988, at 53 FR 18620.

Also on May 9, 1988, ATSF filed responsive applications to the KCSI proposal. These applications were supplemented by ATSF on June, 1988, the date established by Decision No. 7 for the filing of responses to conditions to the primary application. The applications and supplemental material were timely filed.

In Sub-No. 8, ATSF proposes to acquire trackage rights over properties of SPT and KCS as follows:

1. Over SPT's Glidden Subdivision from Rosenberg (Tower 17, milepost 36.3) to West Junction (milepost 12.6). Over SPT's Englewood Line from West Junction (milepost 9.4) to Dawes (milepost 353.0), including the Freight Line between Chaney Junction and Tower 26 (2.9 miles).

2. Over SPT's Harrisburg Line from Tower 68 (milepost 0.0) to West Junction (milepost 12.6). Over SPT's Galveston Line from Harrisburg Junction (milepost 7.2) to Seabrook (milepost 30.8), including the HL&P Lead (4.2 miles), the Bayport Loop (5.0 miles) and Barbour's Cut Terminal. ATSF would provide local service on these lines.

3. Over SPT's Avondale and Lafayette Lines from Dawes (milepost 353.0) to West Bridge Junction (milepost 10.5), including rights over KCS's Seventh Subdivision between GCL Junction (milepost 766.6) and Tower 31 (milepost 764.9). Over SPT's Baytown Branch from

Dayton (milepost 0.0) to Baytown (milepost 24.6). Over SPT's Sabine Branch between West Port Arthur (milepost 12.1) and Beaumont (milepost 30.17), including Chaison Spur (3.3 miles) and Port Arthur Branch (3.21 miles). ATSF would provide local service on these lines.

4. Over KCS's Lake Charles Branch from milepost B734.0 near Mossville to the end of the line at milepost B739.4 at Lake Charles, including connection to SPT's line. ATSF would provide local service on this line.

5. Over L&A's Texas Subdivision from milepost T185.3 at Farmersville to milepost T0.0 at Texas Junction, and over KCS's Fifth and Sixth Subdivisions and L&A's Shreveport Subdivision between Texas Junction and Red Junction (Shreveport), including access to SPT/St. Louis Southwestern terminal facilities and all connecting lines at Shreveport.

In Sub-No. 9, ATSF seeks joint use of terminal area trackage operated by NOPB in New Orleans, between West Bridge Junction and connections with CSX Transportation and Norfolk Southern at New Orleans (Gentilly). ATSF states that it is attempting to reach a satisfactory voluntary agreement for use of these properties.

The rights sought are contingent upon the approval or substantial approval of the KCSI inconsistent application. In support of its applications, ATSF states that, if the KCSI inconsistent application is granted, the services proposed by ATSF will be necessary to eliminate actual or potential anticompetitive effects in southeast Texas and Louisiana, and between ATSF-served points and the Southeast.

The applications substantially comply with the applicable regulations. The applications and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representative named below.

The description of the properties over which ATSF seeks trackage rights, as described above and in its application, cannot be fully identified on its maps submitted as Exhibit 1 to the application. ATSF is directed to submit a new Exhibit 1 or a revised property identification, no later than June 20, 1988.

The applications are consolidated for disposition with the applications in Finance Docket No. 32000, *et al.* Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first

instance by the entire Commission. 49 U.S.C. 11345.

Participation in the Proceedings: Comments

Interested persons may participate formally by submitting written comments regarding the responsive applications. Comments should indicate the exact proceeding designation, and should be filed in the numbers and with the Commission offices specified above no later than June 27, 1988. Comments shall include the following: The person's position in support of or in protest to the proposed transaction; any and all evidence, including verified statements, in support of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. See 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend actively to participate in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments shall be concurrently served by first class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on:

- (1) Applicant's representative:
Gus Svolos, The Atchison, Topeka and Santa Fe Railway Co., 80 East Jackson Boulevard, Chicago, IL 60604
and
- (2) Representatives of the primary applicants:
Samual R. Freeman, Vice President and General Counsel, The Denver and Rio Grande Western Railroad Company, P.O. Box 5482, Denver, CO 80217
and
E. Barrett Prettyman, Jr., Hogan and Hartson, 555 Thirteenth St., NW., Washington, DC 20004-1109
and
- (3) Representatives of the inconsistent applicant:
Morris Raker, Sullivan & Worcester, One Post Office Square, Boston, MA 02109
and
Robert L. Calhoun, Sullivan & Worcester, 1025 Connecticut Ave. NW., Washington, DC 20036
and

Robert K. Dreiling, 114 West 11th St., Kansas City, MO 64105

Comments must also be served, by first class mail, on all persons designated as active parties of record on the Commission's service list, served May 16, 1988. Briefs from all parties are due July 11, 1988.

Responsive Applications

Because these applications contain proposed conditions to approval of the inconsistent application in Finance Docket No. 32000 (Sub-No. 3), the Commission will entertain no requests for affirmative relief to these proposals. Parties may participate only in direct support of or direct opposition to ATSF's applications as filed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. The applications in Finance Docket No. 32000 (Sub-Nos. 8 and 9) are accepted for consideration.
2. The parties shall comply with all provisions as stated above.
3. This decision is effective on the date served.

Decided: June 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Sterrett did not participate.

Noreta R. McGee,

Secretary.

[FR Doc. 88-13725 Filed 6-16-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 23X)]

Southern Railway Co.; Abandonment Exemption Between Harrisburg and Karnak, IL, and Between Harrisburg and the Sahara Mine, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts the Southern Railway Company from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon two line segments totalling 52.6 miles of track extending from Harrisburg to Karnak, IL, and Sahara Mine to Harrisburg, IL, subject to standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 17, 1988. Formal expressions of intent to file

an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 27, 1988, petitions to stay must be filed by July 5, 1988, and petitions for reconsideration must be filed by July 12, 1988. Requests for a public use condition must be filed by June 27, 1988, petitions to stay must be filed by July 5, 1988, and petitions for reconsideration must be filed by July 12, 1988. Requests for a public use condition must be filed by June 27, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 23X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Nancy S. Fleischman, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information in contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

Decided: June 10, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary,

[FR Doc. 88-13726 Filed 6-16-88; 8:45 am]

BILLING CODE 7035-c1-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-86]

Revocation of Registration; Gil E. Pablo, M.D.

On October 16, 1986, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to Gil E. Pablo, M.D. (Respondent), of Philadelphia, Pennsylvania, proposing to revoke DEA Certificate of Registration

AP2427993, and to deny any pending applications for renewal of said registration on the ground that Respondent's continued registration would be inconsistent with the public interest. The order also immediately suspended Respondent's registration on the ground that allowing him to maintain his registration during the pendency of administrative proceedings would constitute an imminent danger to the public health and safety.

Respondent, through counsel, filed a timely request for a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. On February 17, 1987, Judge Young terminated the proceeding before him, over the objection of the Government, based upon Respondent's failure to file a prehearing statement. The matter was reopened on March 27, 1987, upon request of Respondent's counsel and with the concurrence of the Government. Following preliminary procedures, a hearing in the matter was held on September 10 and 11, 1987, in Washington, DC.

On March 1, 1988, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. After consideration of all evidence and testimony presented by both Respondent and the Government, the Administrative Law Judge concluded that Respondent's continued registration would be inconsistent with the public interest, and recommended that the Administrator revoke his registration and deny any pending applications for renewal. Neither Government counsel nor Respondent's counsel filed exceptions to the opinion and recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge.

Having reviewed the entire record in this proceeding, the Administrator adopts the findings of fact, conclusions of law, opinion and recommended ruling of the Administrative Law Judge, in concluding that Respondent's registration should be revoked, and any pending applications for renewal should be denied.

The Administrator notes that Respondent had an impressive 40 year history of practicing medicine. He was a respected thoracic surgeon who published extensively in the area of thoracic surgery and developed various surgical techniques. In recent years, however, Respondent has maintained a general practice, seeing patients only three afternoons a week.

In 1985, DEA initiated an investigation into Respondent's controlled substance prescribing practices, based upon

information that he was prescribing large quantities of controlled substance prescriptions for other than legitimate medical purposes. Between June 1985 and April 1986, a DEA Special Agent, acting in an undercover capacity, visited Respondent's medical office on nine occasions. On each occasion, the Special Agent obtained prescriptions for controlled substances from Respondent for other than legitimate medical purposes.

On the first two visits, the Special Agent was accompanied by another individual who posed as her boyfriend. During the first visit, Respondent performed cursory medical examinations on the Special Agent and the other individual, primarily consisting of checking their blood pressure, looking in their eyes with a regular flashlight, and checking their hearts with a stethoscope placed outside their clothing. He wrote two prescriptions for the Special Agent, one for Doriden, a Schedule III controlled substance, and the other for Percocet, also a Schedule II controlled substance. He also wrote two prescriptions for the same drugs for the other individual. Neither person gave any specific medical complaints, only that they felt "blah" and needed pills to stay awake. On the second visit, neither the Special Agent nor the other individual expressed any medical complaints, yet Respondent recorded complaints in their medical records and issued prescriptions for Doriden and Percocet to the Special Agent, and prescriptions for Doriden, Percocet and Desoxyn to the other individual.

On each of the other seven occasions, the Special Agent obtained Percocet and Doriden prescriptions for herself, and Percocet, Doriden and Desoxyn prescriptions in the name of the other individual, although he was not present during any of those visits. Again, although the Special Agent did not express any specific medical complaints, Respondent recorded various medical complaints, including lower back pain, in her medical file. At no time did Respondent perform any medical examinations of the Special Agent's back. On several occasions, Respondent specifically informed the Special Agent that the drugs she was receiving were dangerous and that she did not need them. Despite these warnings, Respondent always issued the controlled substance prescriptions to her on each visit. On one occasion, Respondent prescribed controlled substances to the Special Agent after informing her that 16 of his patients died of drug overdoses during a three month period.

¹ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 41 C.F.R. 2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

On one occasion, the Special Agent brought along a District of Columbia police officer who posed as a female prostitute. Although the officer told Respondent her back hurt, he did not examine her back during a cursory examination. Initially, the officer requested that Respondent prescribe Dilaudid for her. After Respondent refused, she asked for Percocet and Valium, which he did subsequently prescribe for her.

Many of the Special Agent's visits to Respondent's medical offices were tape-recorded. The tape recordings of the conversations between the Special Agent, the police officer and the Respondent corroborated the Special Agent's testimony at the administrative hearing. In his testimony, Respondent attempted to justify the prescriptions he issued for the Special Agent, the individual posing as her boyfriend, and the District of Columbia police officer. Based upon the overwhelming evidence indicating that Respondent indiscriminately issued the prescriptions for controlled substances to those individuals, the Administrator finds his testimony unworthy of belief.

Evidence was also presented at the hearing indicating that Respondent continued to write prescriptions for controlled substances after his DEA Certificate of Registration was suspended. A Diversion Investigator from the DEA Philadelphia Field Division testified that Respondent's DEA Certificate of Registration was suspended on October 23, 1986. On that date, Respondent surrendered his registration to DEA Special Agents and Investigators after he was served with the Order to Show Cause and Immediate Suspension of Registration. He also was informed that he no longer had authority to handle any controlled substances, pending the outcome of the administrative action against him. Evidence presented during the administrative hearing revealed that Respondent issued controlled substance prescriptions to individuals on October 23, 1986, shortly after he was informed that he could no longer handle controlled substances. Pennsylvania Medical Assistance records indicated that Respondent continued to issue controlled substance prescriptions after that date. A neighborhood pharmacy also reported that Respondent had issued controlled substance prescriptions after his suspension. The pharmacist also told DEA Diversion Investigators that when he informed Respondent that he could not fill the prescriptions, Respondent replied that he was not aware that the drugs he

prescribed were controlled substances. Respondent, himself, admitted that he wrote a number of controlled substance prescriptions following the immediate suspension of his DEA Certificate of Registration. Respondent's only explanation for continuing to issue prescriptions for controlled substances was that his patients needed the drugs. In addition, he admitted to prescribing controlled substances to persons he knew were already addicted to them.

On February 19, 1987, Respondent executed an application for renewal of his suspended DEA Certificate of Registration. On that application, Respondent answered "no" to the question: "Has the applicant ever been convicted of a felony * * * or even surrendered or had a CSA registration revoked, surrendered, or denied?" By failing to indicate that his DEA registration was suspended, Respondent materially falsified the application for renewal of his registration.

Material falsification of an application for registration is, by itself, a sufficient ground to support the denial of an application for registration or the revocation of the registration itself. See 21 U.S.C. 824(a)(1) and *Lonnie E. Maze d/b/a Crosstown Drugs*, 51 FR 24242 (1986). In this case, Respondent's fraudulent response to his application for registration constitutes material falsification, and is sufficient evidence to support the revocation of his registration and the denial of the pending application for renewal.

In addition, there is no question but that Respondent's continued registration would be inconsistent with the public interest. On at least nine occasions, Respondent issued numerous controlled substance prescriptions for an undercover DEA Special Agent and another individual, and on one occasion, he issued controlled substances to an undercover District of Columbia police officer. None of these prescriptions were issued for a legitimate medical purpose. Respondent attempted to make his prescribing practices appear legitimate by writing various medical symptoms in these patients' medical charts even though the individuals never suffered from, nor complained of, any of the symptoms. Even after Respondent's registration was suspended, he continued to prescribe controlled substances. Respondent's actions did not result from ignorance, but rather from a total disregard for controlled substance laws and regulations. His behavior demonstrates that he can no longer be entrusted with a DEA Certificate of Registration.

Although Respondent submitted a number of letters from various individuals attesting to his competence and community service, and he personally testified regarding his controlled substance handling activities, the Administrator is not persuaded that Respondent can be entrusted with a DEA registration. Neither the documentary evidence presented nor Respondent's own testimony mitigates or justifies Respondent's outrageous controlled substance handling practices.

Therefore, based upon Respondent's material falsification of his application for renewal of his DEA Certificate of Registration and his improper controlled substance handling practices, the Administrator concludes that Respondent's registration is contrary to the public interest and that his DEA Certificate of Registration must be revoked. All pending applications for renewal must also be denied. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AP2427993, previously issued to Gil E. Pablo, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective June 17, 1988.

Date: June 13, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-13730 Filed 6-16-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-83]

Denial of Application; Gilberto Vila-Balzac, M.D.

On December 4, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gilberto Vila-Balzac, M.D. (Respondent) of Dunwoody, Georgia, proposing to deny his application for a DEA Certificate of Registration. The statutory predicate for the Order to Show Cause was Respondent's lack of authorization to handle controlled substances in the State of Georgia.

By letter dated December 29, 1987, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. On February 9, 1988, Government counsel filed a motion

for summary disposition. On February 26, 1988, Respondent's counsel filed a response to the Government's motion for summary disposition. Judge Bittner issued her opinion and recommended decision on March 16, 1988. Neither party filed exceptions to the Administrative Law Judge's opinion and recommended decision and, on April 21, 1988, the Administrative Law Judge transmitted the record in this matter to the Administrator. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrative Law Judge found that there was undisputed evidence that the Georgia Composite Board of Medical Examiners suspended Respondent's medical license for three years beginning in June 1984, and restricted his authority to handle controlled substances for three years following the suspension. Respondent is not authorized to handle controlled substances in the State of Georgia until June 1990. In Respondent's response to the motion for summary disposition, he alleged that the evidence before the Georgia Medical Board was erroneous and that Respondent is licensed to practice medicine with no restrictions in the State of Colorado.

The Administrative Law Judge further found that the Controlled Substances Act, at 21 U.S.C. 823(f) specifies, among other things, that a DEA registrant must be "authorized to dispense * * * controlled substances under the law of the State in which he practices." Thus, DEA does not have the statutory authority under the Controlled Substances Act to register a "practitioner" unless the "practitioner" is authorized by the state to dispense controlled substances. The Administrator of DEA has consistently so held. See *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Aqostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). The Administrative Law Judge concluded that it is irrelevant to the proceedings whether Respondent is authorized to dispense controlled substances by the State of Colorado when the location at which he seeks DEA registration is in Georgia. The Administrative Law Judge also concluded that Respondent is not currently entitled to a DEA registration in Georgia.

The Administrative Law Judge found that the motion for summary disposition was properly entertained and must be granted. When no question of fact is involved, or when the facts are agreed, a

plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, even though the pertinent statute prescribes a hearing. In such situations, the rationale is that Congress did not intend administrative agencies to perform meaningless tasks. *U.S. v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); *Alfred Tennyson Smurthwaite, N.D.* Docket No. 77-29, 43 FR 11873 (1978); *Philip E. Kirk, M.D.*, Docket No. 82-36, 48 FR 32887 (1983), aff'd. *sub nom Kirk v. Mullen*, 749 F. 2d 297 (6th Cir. 1984).

The Administrative Law Judge recommended that Respondent's application for a DEA Certificate of Registration be denied. The Administrator adopts the opinion and recommended decision of the Administrative Law Judge in its entirety. Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration, dated July 9, 1987, submitted by Gilberto Vila-Balzac, M.D., be, and it hereby is, denied. This order is effective June 17, 1988.

Dated: June 13, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-13731 Filed 6-16-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the President's Committee on the ILO:

Name: President's Committee on the International Labor Organization.

Date: Friday, July 15, 1988.

Time: 10:00 a.m.

Place: U.S. Department of Labor, Third and Constitution Ave. NW., Room S-2508, Washington, DC 20210.

This meeting will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). During its closed session, the Committee will discuss national security matters.

All communications regarding this Committee should be addressed to: Mr. Eugene K. Lawson, Counselor to the Committee, U.S. Department of Labor, Third and Constitution Ave. NW., Room

S-2235, Washington, DC 20210, telephone (202) 523-6043.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88-13780 Filed 6-16-88; 8:45 am]

BILLING CODE 4516-23-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:	
AL88-4 (Jan. 8, 1988)	p. 8.
Connecticut:	
CT88-1 (Jan. 8, 1988)	p. 67.
New York:	
NY88-7 (Jan. 8, 1988)	pp. 738-740.

Volume II

Iowa:	
IA88-5 (Jan. 8, 1988)	pp. 42-46.
IA88-6 (Jan. 8, 1988)	pp. 52-53.
Illinois:	
IL88-1 (Jan. 8, 1988)	p. 76.
IL88-2 (Jan. 8, 1988)	p. 100.
IL88-4 (Jan. 8, 1988)	p. 121.
IL88-5 (Jan. 8, 1988)	p. 126.
IL88-7 (Jan. 8, 1988)	p. 138.
IL88-15 (Jan. 8, 1988)	p. 196.
IL88-16 (Jan. 8, 1988)	p. 208.
IL88-17 (Jan. 8, 1988)	p. 220.
Indiana:	
IN88-1 (Jan. 8, 1988)	pp. 233-240.
IN88-2 (Jan. 8, 1988)	pp. 248-264.
IN88-3 (Jan. 8, 1988)	p. 266.
IN88-4 (Jan. 8, 1988)	p. 279.
IN88-5 (Jan. 8, 1988)	pp. 290, 292.
IN88-6 (Jan. 8, 1988)	pp. 300, 305.
Michigan:	
MI88-2 (Jan. 8, 1988)	pp. 426-429.

Volume III

California:	
CA88-4 (Jan. 8, 1988)	pp. 96-102b.
Colorado:	
CO88-1 (Jan. 8, 1988)	p. 104.
Nevada:	
NV88-2 (Jan. 8, 1988)	p. 260.
NV88-4 (Jan. 8, 1988)	p. 272.

General Wage Determining Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of June 1988.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 88-13596 Filed 6-16-88; 8:45 am]
BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Carpentertown Coal and Coke Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 27, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 27, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 6th day of June 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm	Location	Date received	Date of petition	Petition No.	Articles produced
Carpentertown Coal & Coke Co. (Workers)	Templeton, PA	6/6/88	5/26/88	20,711	Metallurgical coal.
Chemseco (Teamsters)	Cumberland, MD	6/6/88	5/20/88	20,712	Automotive chemicals.
Core Laboratories (Workers)	Irving, TX	6/6/88	5/4/88	20,713	Petroleum core analysis.
Hallden Machine Co. (UAW)	Thomaston, CT	6/6/88	5/25/88	20,714	Metal cutting machine.
Lone Star Industries, Inc. (USWA)	Dallas, TX	6/6/88	4/6/88	20,715	Cement.
Pacific Dunlop-G.N.B., Inc. (IBEW)	Zanesville, OH	6/6/88	5/19/88	20,716	Batteries.
Sprague Meter (IUE)	Bridgeport, CT	6/6/88	5/20/88	20,717	Gas meters.
Spun Steel, Inc. (Workers)	Corinth, MS	6/6/88	5/26/88	20,718	Metal automotive pulleys.
Well Improvement, Inc. (Company)	Houston, TX	6/6/88	5/17/88	20,719	Downhole Equipment.

[FR Doc. 88-13781 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Indian and Native American Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed designation procedures for grantees; request for comments.

SUMMARY: This document contains proposed procedures by which the Department of Labor (DOL) will designate grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA). The next cycle of such designation actions will cover JTPA Program Years 1989 and 1990 (July 1, 1989 through June 30, 1991). Applicants selected for funding in PY 1989 also will be funded in PY 1990 if applicable regulatory requirements are met, and funds are available. This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATE: The public is invited to submit written comments on the proposed procedures. Such written comments must be received on or before July 18, 1988.

ADDRESS: Send written comments to: Assistant Secretary for Employment and Training, U.S. Department of Labor, Employment and Training Administration, Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs (OSTP).

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs. Telephone: 202-535-0502.

SUPPLEMENTARY INFORMATION:

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- II. Advance Notice of Intent
- III. Notice of Intent
- IV. Preferential Hierarchy for Determining Designations
- V. Use of Panel Review Procedure
- VI. Notification of Designation/Nondesignation
- VII. Special Designation Situations
- VIII. Designation Process Glossary

Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in JTPA and in the regulations at 20 CFR Part 632. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under JTPA Section 401, and designates such entities as Native American grantees, contingent on all other grant award requirements being met. This notice describes how DOL proposes to make such designation decisions for the period of Program Years (PYs) 1989 and 1990 (July 1, 1989 through June 30, 1991). It provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

The amount of JTPA Section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The specific organization eligibility and application requirements for designation are contained at 20 CFR 632.10 and 632.11. Any organization interested in being designated as a Native American grantee should be aware of and comply with these requirements.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general

principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR Part 632 regardless of their apparent standing in the preferential hierarchy. The basic eligibility, application and designation requirements are found in Subpart B of Part 632.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services, and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State-recognized or federally recognized tribe, band, or group on its reservation is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. A reservation organization which may have its service area given to another qualified organization for reasons specified in the regulations will be given a future opportunity to reestablish itself as the designated grantee, should it so desire.

In the event that such a tribe, band, or group (including an Alaskan Native entity) is not designated to serve such groups, the DOL will consult with the governing body of such entities as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit.

(4) In designating Native American grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR

632.10(f) and as further clarified in this notice.

(5) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past fourteen years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established service area. Such preference will be identified through input from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive requests prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential competitors, to resolve conflicts if possible, and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change service area requests in the final Notice of Intent. Therefore,

as noted above, final submissions should be prepared with this possibility in mind.

By October 1 of the year preceding a designation year, all organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. Advance Notices are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, Room N-4641, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ANOI/NOI Desk.

The Standard Form (SF) 424 is no longer used for the advance notification process. As in the PY 1987-1988 designation cycle, DOL will utilize the Advance Notice of Intent. This allows DOL to expedite the identification of potentially competitive applicants.

Complete instructions will be mailed to all current grantees on or about August 15. Incumbents will also receive a description of their present service area at this time. New applicants may request copies of the Advance Notice instructions by writing to: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, Room N-4641, 200 Constitution Ave., NW., Washington, DC 20210.

The first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants with copies of all Advance Notices of Intent submitted for their areas. The notification will occur on or above November 15. The notification will state that organizations are encouraged to work out any jurisdictional disputes among themselves, and to submit a final Notice of Intent by the required postmarked January 1 deadline or withdraw their Advance Notice.

Under the Advance Notice of Intent process, it is DOL policy that to the extent possible within the regulations, service areas and the organizations operating in those areas be determined by the community to be served by the program. In the event the Native American community cannot resolve differences, the notification will inform parties that they should take special care with their final Notices of Intent to

ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice.

III. Notice of Intent

All applicants will submit an original and two copies of a final Notice of Intent, postmarked no later than January 1, 1989, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. *Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed 75 pages of double-spaced unrounded type.*

Final Notices of Intent are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, Room N-4641, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ANOI/NOI Desk.

The regulations permit current grantees requesting their existing service areas to submit a Standard Form 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands, or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their service area request has not changed.

Although organizations are encouraged to alter their area requests to minimize or avoid overlap with other organizations, they should not add territory to that identified in the Advance Notice of Intent. Unless currently designated for such areas, any organization applying on January 1 for noncontiguous areas shall prepare a separate, complete Notice of Intent for each such area.

It is the DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part V, USE OF PANEL REVIEW PROCEDURE, below). All information provided before the deadline must be in writing.

IV. Preferential Hierarchy for Determining Designations

In cases in which only one organization is applying for a clearly identified geographic area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same or an overlapping area, DOL will utilize the order of designation preference described in the hierarchy below. The organization which falls into the highest category of preference will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) *Indian tribes, bands, or groups on federal or State reservations for their reservation; Oklahoma Indians (see Part VII, SPECIAL DESIGNATION SITUATIONS, below); and Alaskan Native entities (see Part VII, SPECIAL DESIGNATION SITUATIONS, below).*

(2) *Native American-controlled, community-based organizations with significant support from other Native American controlled organizations within the community for their existing DOL designated service area and all non-incumbent Native American-controlled, community-based organizations that are challenging such incumbents or seeking to serve areas for which the incumbent is not re-applying. Non-incumbent organizations must submit evidence of significant support from other Native American-controlled organizations within the community.*

Competition shall occur only when a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent. Such potential will be determined by the consideration of such factors as the following: Completeness of the application; documentation of past experience and Native American-controlled organizational support; and the capability of the incumbent. In the instance of no incumbent, new applicants qualified for this category would compete against each other.

(3) *Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.*

(4) *Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it*

must subsequently develop a Native American advisory process.

The Chief, DINAP, may convene a task force to assist in making hierarchical determinations. The task force also may perform such technical and advisory functions as determining which areas have more than one applicant for designation, documenting the eligibility of new applicants, and ascertaining the timeliness of final Notice of Intent submissions. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion. As indicated earlier, applicants will not be able to provide any information past the January 1 postmark or hand delivered deadlines, and no information will be solicited by DINAP.

V. Use of Panel Review Procedure

Competition may occur under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not re-applied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy.

When competition occurs, the Grant Officer may convene a review panel of Federal officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel results will be advisory to the Grant Officer, not binding. In reviewing information submitted by the organization, the panel will not accept simple assertions. Any

information must be supported by adequate and verifiable documentation.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points (20 CFR 632.10 and 632.11).

(i) Previous experience in successfully operating an employment and training program serving Indians or Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(ii) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(iii) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Applicant's Understanding and Program Approach to Fulfilling the Training and Employment Objectives of JTPA, Section 401—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(i) Private sector involvement—10 points.

(ii) Community support as defined in Part VIII, DESIGNATION PROCESS GLOSSARY, below—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(i) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(ii) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

VI. Notification of Designation/Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: The review panel's recommendation, in those instances where a panel is convened; input from DINAP, OSTP, the Office of Financial and Administrative Management, and the Office of the Inspector General; and any other available information regarding the organization's responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, as follows:

(1) Designation Letter

The designation letter signed by the Grant Officer will serve as official notice of an organization's designation.

The letter will include the service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or, if acceptable to the designee, more than the area requested.

(2) Conditional Designation Letter

Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) Non-designation Letter

Any organization not designated, in whole or in part, for an area requested will be notified formally of the non-designation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13. If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) Alaskan Native Entities

DOL has established service areas for Alaskan Native employment and training programs based on the following: The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); the boundaries of major subregional areas where the primary provider of human resource development and related services is an Indian Reorganization Act (IRA)-recognized tribal council; and the boundaries of the one Federal reservation in the State. Within these established service areas, DOL has designated the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. These entities have been regional nonprofit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program years 1989 and 1990.

(2) Oklahoma Indians

DOL has established a service delivery system for Indian employment and training programs in Oklahoma

based on a preference for Oklahoma Indians to serve portions of the State. Generally, service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. However, in cases in which members of many different tribes reside in a given county, no attempt has been made to apportion those members among all of the respective tribes. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1989 and 1990 to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) Indian or Native American-Controlled Organization

This is defined as any organization with a governing board, more than 50 percent of whose members are Indian or Native American people. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private non-profit agency. The governing board must have decision making authority for the Section 401 program.

(2) Service Area

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined finally by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) Established Service Area

This is the area defined by geography or service population which DOL has previously designated as a service area for Indian and Native American JTPA purposes.

(4) Community Support

This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic area for which designation is requested. Applicants should provide supporting documentation regarding the nature of such organizations, e.g., evidence of Indian and Native American control, articles of incorporation or charter, size, membership, etc.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC this 9th day of June 1988.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Herbert Fellman,

Chief, Division of Indian and Native American Programs.

Robert D. Parker,

Grant Officer, Office of Grants and Contracts Management.

Robert T. Jones,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 88-13782 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-30-M

Bureau of Labor Statistics

Request for Comments on Change in Local Area Unemployment Statistics (LAUS) Procedures

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed change in local area unemployment statistics methodology.

SUMMARY: The Bureau of Labor Statistics (BLS) intends to introduce a methodological improvement in the procedures for developing State employment and unemployment statistics. With the completion of various long-term research activities, including special joint efforts with cooperating State Employment Security Agencies to test, evaluate, and simulate new and improved techniques, the BLS plans to implement the use of dynamic regression models in 39 States and the District of Columbia. These States are those, other than the 11 largest, for

which sample-based estimates from the Current Population Survey have insufficient reliability to use as monthly employment and unemployment levels. The proposed employment and unemployment rate models allow for tailoring in the estimation equations, to account for individual features of each State's economy, and contain a built-in updating mechanism so that the equations adapt to structural changes as they occur. Implementation of this proposed change to State estimating methods will be effective with estimates for January 1989.

DATE: Comments must be submitted on or before September 15, 1988.

ADDRESS: Send comments to: U.S. Department of Labor, Bureau of Labor Statistics, 441 G Street NW., Room 2083, Washington, DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon Brown, 202-523-1038.

SUPPLEMENTARY INFORMATION: A description of the proposed procedure can be obtained upon request at the above address.

Dated at Washington DC, this 10th day of June 1988.

Janet L. Norwood,
Commissioner.

[FR Doc. 88-13783 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-24-M

Mine Safety and Health Administration

[Docket No. M-88-47-C]

Petition for Modification of Application of Mandatory Safety Standard; Charity Coal Co., Inc.

Charity Coal Company, Inc., P.O. Box 267, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-15942) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges from 42 to 49 feet in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of cabs or canopies on the mine's two S & S 488 scoops would result in a diminution of safety to the miners affected because the cabs or canopies could strike and destroy roof support and the power line system. The cabs or canopies would

also limit the equipment operator's visibility and seating position, creating the chances for an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 18, 1988. Copies of the petition are available for inspection at that address.

Dated: June 13, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-13784 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on June 28 and possibly June 29, 1988 if needed at 9:00 a.m. in Room C-2318 at the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

Agenda items will include an update on OSHA's Permissible Exposure Limits (PEL) project, an OSHA presentation on trainers and training programs concerning hazardous waste operations and emergency response, and an update on OSHA's activities relating to AIDS.

NACOSH was established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. A detailed agenda will be prepared, made publicly available and sent to members prior to the meeting. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the

Committee chairperson to the extent to which time permits. For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue NW., Washington, DC 20210. Telephone 202-523-8615.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC, this 13th day of June 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-13700 Filed 6-16-88; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88-61]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion.

DATE AND TIME: June 29, 1988, 10 a.m. to 5 p.m.; and June 30, 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Chemistry Laboratory, Room 137, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Reck, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion, chaired by Dr. F. Blake Wallace, is comprised of eight members. The meeting will be open to the public

up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

June 29, 1988

10 a.m.—Ongoing NASA Program Reviews.

1:30 p.m.—Related Department of Defense Program Reviews.

5 p.m.—Adjourn.

June 30, 1988

8:30 a.m.—Continue Ongoing NASA Program Reviews.

10:30 a.m.—Tour Facilities.

1:30 p.m.—Working Session for Review Team Members.

3:30 p.m.—Adjourn.

Ann Bradley,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

June 13, 1988.

[FR Doc. 88-13727 Filed 6-16-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on July 21, 1988. The business session of the meeting will be held at the U.S. State Department, Washington, DC. An executive session of the meeting will be held at the Old Executive Office Building.

Business Session

- Call to Order
- Welcoming Remarks
- Review of Government Activities
- Review of Ongoing NSTAC Activities
 - Industry Information Security
 - Telecommunications Systems Survivability
 - Telecommunications Industry Mobilization
 - National Telecommunications Management Structure
- Telecommunications Service Priority
- Review NSTAC Recommendations to the President
- Review NSTAC Charges to IES
- Closing Remarks
- Adjourn

Executive Session

- Call to Order
- Opening Remarks by the Assistant to the President for National Security Affairs
- Remarks by the Secretary of Defense
- President Arrives
- NSTAC Report to the President
 - Work Accomplished by NSTAC
- Remarks by the President
- Recognition of Departing and Arriving Chair
 - President Departs
- Closed Session
- Adjourn

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write to the Office of the Manager, National Communications System, Washington, DC 20305-2010.

A. L. Henrichsen,

Acting Assistant Manager, NCS Joint Secretariat.

[FR Doc. 88-13729 Filed 6-16-88; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 22 Jackson Place, Room 3208, NEOB Washington, DC 20503.

Title: Identification of Minority Mathematics, Chemistry, Physics, and Astronomy Majors.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 200 responses, 100 burden hours.

Abstract: NSF is trying to develop baseline data for a program to increase the minority representation in the scientific manpower pool. One aspect of this effort would involve identifying minority undergraduates majoring in Chemistry, Mathematics, Physics, and Astronomy, at eight Historically Black Colleges and Universities.

Dated: June 14, 1988.

Herman G. Fleming,

NSF Clearance Officer

[FR Doc. 88-13704 Filed 6-16-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23, issued to Carolina Power & Light Company (the licensee), for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 (HBR-2) located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) to remove the restriction of operating power to 1380 MWt with two safety injection (SI) pumps operable and to restore the power peaking factor (Fq) to 2.32 from its current value of 2.26 with two SI pumps operable.

The proposed action is in accordance with the licensee's application for amendment dated May 7, 1988, as supplemented by letters dated May 16 and May 20, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to allow the licensee to operate HBR-2 at a steady state power level up to 2300 MWt with two SI pumps operable.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS. The safety injection system is a safety system which only has a function for accident mitigation. The environmental impact of operating H.B. Robinson at the design power level of 2300 MWt with two SI pumps operable is within impacts evaluated in the Final Environmental Statement (FES) on H.B. Robinson issued in April, 1975. The proposed action would not result in any environmental impact that is outside of the scope discussed in the FES. Therefore, the Commission concludes that the amendment involves no

significant increase in the amounts and no significant change in the types of any effluents that may be released offsite; and that there should be no significant increase in individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves requirements with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the HBR-2 dated April 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated May 7, 1988 and supplements dated May 16 and May 20, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 15th day of June 1988.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate 11-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-13819 Filed 6-16-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-3 issued to Yankee Atomic Power Company (the licensee), for operation of the Yankee Nuclear Power Station located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) related to control rod position indication and corrects a minor error in the TS.

The proposed action is in accordance with the licensee's application for amendment dated December 23, 1987.

The Need for the Proposed Action

The proposed change to the TS will serve to remove an ambiguity between two TS and correct an error.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions bring the Yankee TS in close agreement with the Standard Technical Specifications and removes an error. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on March 17, 1988 (53 FR 8827). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 23, 1987 which is available for public inspection at the Commission's Public Document Room, Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 13th day of June 1988.

For the Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 88-13722 Filed 6-16-88; 8:45 am]

BILLING CODE 7590-01-M

Generic Letters; Arrangements With the Government Printing Office for Purchasing Service

Generic Letters issued by the Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission (NRC) are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Hard or microfiche copies can be purchased through the services of the Government Printing Office (GPO). Purchasing information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. Information can also be obtained by calling (202) 275-2060 or 275-2171. If additional assistance is needed contact Hazel Smith, NRR, on (301) 492-1287.

Dated at Rockville, Maryland, this 10th day of June 1988.

For the Nuclear Regulatory Commission,
Cecil O. Thomas,
Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.
[FR Doc. 88-13723 Filed 6-16-88; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting Revision

The Federal Register published on Wednesday, June 8, 1988 (53 FR 21541) contained notice of a meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena to be held Tuesday, June 21, 1988, Room 1046, 1717 H Street NW., Washington, DC. The meeting will start at 8:00 a.m. instead of 8:30 a.m. as previously notice. All other items pertaining to this meeting remain the same as previously published.

Dated: June 13, 1988.
Morton W. Libarkin,
Assistant Executive Director for Project Review.
[FR Doc. 88-13741 Filed 6-16-88; 8:45 am]
BILLING CODE 7590-01-M

POSTAL SERVICE

Implementation of Change in the Domestic Mail Classification Schedule Provision Regarding Imposition of Restrictions on the Sale of Postal Money Orders

AGENCY: Postal Service.
ACTION: Notice of implementation of a change in the Domestic Mail

Classification Schedule provision regarding the ability of the Postal Service to place permanent restrictions on the sale of postal money orders.

SUMMARY: This gives notice that, effective at 12:01 a.m. on June 19, 1988, the Postal Service will amend section 8.020 of the Domestic Mail Classification Schedule to allow the imposition of restrictions on the number or dollar value of postal money order sales, or both, in accordance with regulations prescribed by the Postal Service.

EFFECTIVE DATE: June 19, 1988.

FOR FURTHER INFORMATION CONTACT: Janet E. Noble, (202) 268-2995.

SUPPLEMENTARY INFORMATION: On August 2, 1987, the United States Postal Service imposed a temporary restriction on the purchase of money orders (52 FR 27992). Individual postal customers have not been permitted to purchase money orders in excess of \$10,000 in face value on any day since the temporary restriction went into effect. This was in response to the identification of postal money orders as being one means used to launder the proceeds of the sale of illegal drugs.

Because the Domestic Mail Classification Schedule only allowed the Postal Service to impose temporary restrictions on the sale of money orders, the Postal Service, on December 4, 1987, filed with the Postal Rate Commission a request for a recommended decision to change the DMCS to permit permanent restrictions. Included in the request was a correction in that section of the DMCS of the maximum value of a postal money order, which should have been \$700 but had been incorrectly stated as \$500. The Commission assigned the case Docket No. MC88-1 and published a notice in the Federal Register on December 10, 1987 (52 FR 46873-46874) describing the request and offering interested parties an opportunity to intervene. There were no intervenors in the case. On May 18, 1988, the Postal Rate Commission issued an opinion and recommended decision granting the Postal Service's request. The recommended language provides:

8.020—The maximum value for which a domestic postal money order may be purchased is \$700. Other restrictions on the number or dollar value of postal money order sales, or both, may be imposed in accordance with regulations prescribed by the Postal Service.

The Governors of the Postal Service approved the recommended decision on June 7, 1988, pursuant to 30 U.S.C. 3625(b) and ordered it into effect. By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C.

3625(f), set the effective date of the change at 12:01 a.m. on June 19, 1988. Board of Governors Resolution No. 88-6. Accordingly, the change in section 8.020 of the Domestic Mail Classification Schedule set forth above shall take effect at 12:01 a.m. on June 19, 1988. Changes to section 941 of the Domestic Mail Manual, retaining the \$10,000 restriction and making additional revisions, also take effect on June 19, 1988 (53 FR 21820).

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-13740 Filed 6-16-88; 8:45 am]

BILLING CODE 7110-12-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Office: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549. New Regulations S No. 270-315

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Regulations S which provides clarification of the extraterritorial application of the registration provisions of the Securities Act of 1933. The Regulation is not a form and would be assigned one burden hour for administrative purposes.

Direct general comments to Robert Neal at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to:

Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6005 and

Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228 New Executive Office Building, Washington, DC 20503

Jonathan G. Katz,
Secretary.

June 10, 1988.

[FR Doc. 88-13720 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25799; Filed No. SR-CBOE-88-09]

**Self-Regulatory Organizations;
Proposed Rule Change by Chicago
Board Options Exchange, Inc.,
Relating to Value of Index
Participations**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1988 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The Exchange proposes to add the following new chapter 25 to its rules for the purpose of listing value of index participations. Unless otherwise designated, all language is new.

Chapter XXV

Value of Index Participations

Introduction

The rules in this Chapter are applicable only to value of index participations. The rules in Chapters I through XIX are also applicable to the value of index participations provided for in this Chapter. In some cases rules in Chapter I through XIX are replaced or are supplemented by rules in this Chapter.

Definitions

Rule 25.1

Value of Index Participation

(a) The term Value of Index Participation ("VIP") means a security based on the spot value of an index of stocks multiplied by the VIP multiplier, of indeterminate duration, and paying its purchasers a proportionate share of dividends declared on the component stocks of the index. Cash-Out Time.

(b) The term "cash-out time" means the point in time each quarter of the year when (i) A purchaser of a VIP may obtain the aggregate closing value or (ii) a seller of a VIP may pay the aggregate closing value plus the exercise fee upon exercise of the cash-out privilege. The cash-out time for each quarter will be determined and made public by the Exchange before the beginning of the quarter.

Exercise Fee

(c) The term "exercise fee" is the amount, representing one percent (1%) of the aggregate closing value, that the exercising seller must pay to the assigned purchaser, in addition to the aggregate closing value, upon exercise of the cash-out privilege.

Purchaser

(d) The term "purchaser" or "long" means the holder of a VIP contract under which the holder has the right, in accordance with the terms and provisions of the VIP, to sell the contract to the Clearing Corporation and obtain the aggregate closing value, and the obligation to receive the aggregate closing value plus the exercise fee if assigned at the cash-out time. The deadline for exercising the cash-out privilege will be determined and made public by the Exchange before the beginning of the quarter.

Seller

(e) The term "seller" or "short" means the seller of a VIP contract under which the seller has the right, in accordance with the terms and provisions of the VIP, to purchase the contract from the Clearing Corporation and pay the aggregate closing value plus the exercise fee and the obligation to deliver the closing value if assigned at the cash-out time.

Underlying Security

(f) The term "underlying security" or "underlying securities" with respect to a VIP contract means any of the stocks that are the basis for the calculation of the index.

VIP Multiplier

(g) The term "VIP multiplier" means the amount specified in the contract by which the current index value is to be multiplied to arrive at the VIP value.

Current and Closing Value

(h) The term "current value" in respect of a particular VIP index shall be derived from the reported prices of the underlying securities that are the basis for the index as reported by the reporting authority for the index. The "closing value" shall be the value reported at a time or times specified by the Exchange for determining the payment to which a VIP buyer is entitled or a VIP seller must make in order to exercise the VIP cash-out privilege.

VIP Closing Value

(i) The term "VIP closing value" means the index closing value multiplied by the VIP multiplier times the unit of trading.

Reporting Authority

(j) The term "reporting authority" in respect of a particular index means the Exchange or the institution or reporting service designated by the Exchange as the official source for calculating and

determining the current index value or the closing index value and the proportionate share of dividends payable to VIP holders.

Designation of the Index

Rule 25.2 The stocks that are the basis for the calculation of certain indexes may be selected by the Exchange and may be revised from time-to-time in the Exchange's discretion as necessary or appropriate to maintain the quality and character of the index.

Dissemination of Information

Rule 25.3(a) The Exchange shall disseminate or shall assure that the current index value is disseminated after the close of business and from time-to-time on days which transactions in value of index participations are made on the Exchange.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

Position Limits

Rule 25.4 In determining compliance with Rule 4.11, VIPs shall be subject to a position limit (whether long or short) of no more than 100 million VIPs with respect to any particular underlying index.

Exercise Limits

Rule 25.5 In determining compliance with Rule 4.12, exercise limits for VIPs shall be equivalent to the position limits prescribed in Rule 25.4.

Days and Hours of Business

Rule 25.6 The Exchange will determine when transactions in VIPs may be effected on the Exchange, which shall be no earlier than 8:00 a.m. and no later than 3:15 p.m. Chicago time, except under unusual conditions.

Trading Halts or Suspensions

Rule 25.7 Trading on the Exchange in an index value contract shall be halted or suspended whenever trading is halted or suspended in underlying stocks whose weighted value represents more than 20% of the index value. Trading shall also be halted whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(i) All trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;

(ii) The current calculation of the index derived from the current market prices of the stocks is not available; or

(iii) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading that has been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the conditions which led to the halt or suspension are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading.

Bids and Offers

Rule 25.8 All bids and offers made on the trading floor for VIPs shall be expressed in terms of dollars and decimals for one VIP. The unit of trading shall be 100 VIPs unless otherwise designated by the Exchange.

Reporting of VIP Positions

Rule 25.9 In determining compliance with Rule 4.13 each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer, director or employee of the member organization, and each customer account, which has established an aggregate position of 200,000 VIPs (whether long or short) covering the same underlying index.

Exercise of Cash-Out Privilege

Rule 25.10(a) Notice of exercise of the VIP cash-out privilege must be provided on or before a time specified and made public by the Exchange and which is in accordance with the Rules of The Options Clearing Corporation. Specific exercise cut-off times will also be delineated for Exchange member organizations. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the VIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and policies of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

(b) The term "exercise instruction," with respect to a customer, means the notice given to a member organization to exercise an VIP. All such exercise instructions must be time stamped at the time they are prepared by the receiving member organization.

Notwithstanding the foregoing, member organizations may receive exercise instructions after the exercise cut-off time but prior to the cash-out time: (i) In order to remedy mistakes made in good faith, (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange VIP transactions, or (iii) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such time warrant such action.

Allocation of VIP Exercise Notices

Rule 25.11(a) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in such member organization's customers' accounts. Such allocation shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for VIPs.

(b) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(c) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Margins

Rule 25.12 The margin which must be maintained in margin accounts of customers having positions in value of index participations, whether members, partners of members, member firms, member corporations or stockholders therein or non-members, shall be as follows:

1. 25% of the market value of all "long" VIP positions in the account plus;

2. 30% of the market value, in cash, of each "short" VIP position in the account;

3. No margin need be required in respect to an VIP carried "short" in a customer's account when the customer has delivered to the member organization carrying the account a letter of guarantee meeting the requirements of Rule 610 of The Options Clearing Corporation certifying that the guarantor holds for the customer as security for the letter (1) cash, (2) cash equivalents, (3) one or more qualified securities, or (4) a combination thereof, that such deposit has a market value, computed as of the close of each business day in which the "short" position is carried in the customer account, of not less than 130% of the aggregate current market value of the VIP and that the guarantor will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security has the meaning specified in Interpretation .03 to Rule 24.11.

Limitation of Liability

Rule 25.13(a) Neither the Exchange nor the Reporting Authority shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in collecting or disseminating the current index value or closing index value or tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond their reasonable control, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current value.

(b) The Exchange and Reporting Authority make no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the index or any data included therein in connection with trading or any other use; the Exchange and the Reporting Authority make no express or implied warranties of merchantability or fitness for particular purpose for use with respect to the VIPs or any data included therein.

Reserved Authority

Rule 25.14 The Exchange may, in the event of extreme VIP trading inactivity or under exceptional circumstances, require the purchasers and sellers to

settle their VIP contracts at the closing value determined by a designated cash-out time upon notice of at least one year.

Disclaimer

Rule 25.15 Standard & Poor's Corporation ("S&P") and Chicago Board Options Exchange ("CBOE") make no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the S&P indexes or CBOE indexes, respectively, or any data included therein in connection with the trading of options, or for any other use. S&P and CBOE make no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the S&P indexes or CBOE indexes respectively, or any data included therein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule changes will enable the Exchange to list for trading value of index participations (VIP's) on up to four established broad-based indexes, two developed and maintained by the Exchange, the CBOE 50 and CBOE 250, and two calculated and maintained by Standard & Poor's Corporation, the S&P 100 and S&P 500. All are capitalization-weighted indexes.

Each VIP will represent the multiplier ($\frac{1}{10}$) times the index value. The standard unit of trading will be 100 VIPs. Bids and offers will be expressed in decimals. For example, if the S&P 100 stands at 244.20, the total value of an VIP would be \$2,442 ($244.20 \times \frac{1}{10} = 24.42 \times 100$).

The VIP will be based on the current value of one or more of the above-named stock indexes. Like the CIP proposed by the Philadelphia Stock Exchange, VIPs will have indefinite duration and will entitle holders to cash payments equivalent to a proportionate share of any regular cash dividends. A quarterly "cash-out" exercise privilege is different from that of the CIP in that it

provides for both long and short exercises. At this time the Exchange intends to set the deadline for the exercise of "cash-out" privilege at 3:15 p.m. (Chicago time) on the business day prior to the third Friday in March, June, September and December, and to set the closing value based on the subsequent Friday opening prices. It is contemplated that most VIP buyers will close their positions by selling in the secondary market.

The Exchange has orally commented on the structural flaws it perceives in the design of the Philadelphia Stock Exchange CIPs. For example, if sellers of the CIPs are market professionals who will hedge their short CIPs position by purchasing the underlying equities, they will have constructed a hedge as long as they never need to "unwind" the positions. Given that at some time in the future, the hedged short CIPs holders will desire to reverse this trade, their only option is to purchase the CIPs at the current market price, and sell the underlying equities. However, this is no arbitrage mechanism in place to assure that the CIPs price will reflect the value of the underlying securities, and therefore the CIPs might be trading at an even higher premium than when the market professional thought the initial position was beneficial.

The absence of an arbitrage mechanism in conjunction with the perpetual nature of the proposed contracts may lead to a continual building of open interest in the product with market professionals selling CIPs at premiums over the underlying index and purchasing the underlying equities to construct a hedge. As this process continues, a significant proportion of capitalization of all stocks could be "tied up" in CIPs hedges which, though theoretically perfect, are also perpetual.

In addition to this tying up effect CIPs might have on the underlying securities, the short CIPs holder may also be a victim of a "short squeeze." In this scenario as open interest builds, individual stock liquidity falls, and market participants with short positions recognize that their only way out is to purchase the CIPs, the CIPs premium could continue to grow without regard to the underlying index value.

Because of these reasons, the Exchange has determined to allow VIP sellers to employ the cash-out privilege, but only if they reimburse the assigned purchaser with an exercise fee. The fee will help defray transaction costs and thus allow those assigned purchasers to repurchase their position. The existence of a cash-out privilege for holders of both long and short positions will prevent VIP's from trading at a

substantial difference to the index value.

VIPs are designed to allow investors to participate fully in the performance of the portfolio of stocks comprising the index while enjoying the lower transaction costs associated with cash-settled index options. While certain stock ownership benefits are simulated, VIPs do not give to holders either the right to actual dividends declared by the issuer or the right to vote the underlying shares. OCC will issue the VIPs, in book entry form, and index option trading rules, such as position limits, will apply to VIPs. In addition, option sales practice rules will apply, including the delivery of an Options Disclosure Document. Stock margin rules, however, will apply to the proposed product.

The statutory basis for the proposed rules changes is section 6(b)(5) of the Act in that these contracts will serve the public investors by enabling them to invest in or hedge a basket of stocks reflecting the market in one transaction. The Exchange believes that a properly structured index value contract would benefit public customers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of Publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by July 8, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 13, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13718 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25798; File No. SR-MBS-87-2]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Withdrawing a Proposed Rule Change

On February 9, 1987, MBS Clearing Corporation ("MBSCC") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), a proposed rule change regarding procedures for the physical withdrawal of mortgage-backed securities eligible for deposit in MBSCC's Depository Division. Notice of the proposal was published in the *Federal Register* on February 27, 1987.¹ On April 12, 1988, MBSCC filed two proposed rule changes (File Nos. SR-MBS-88 and MBS-88-9)² which contain new procedures regarding the withdrawal of securities from the MBSCC Depository Division and a request that this proposed rule change be withdrawn.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (File No. SR-MBS-87-2) be, and hereby is, withdrawn.

¹ See Securities Exchange Act Release No. 24120 (February 19, 1987) 52 FR 6088.

² See Securities Exchange Act Release Nos. 25663 (May 4, 1988) 53 FR 16810 and 25662 (May 4, 1988) 53 FR 16808.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: June 10, 1988.

Jonathan G. Katz,

Secretary

[FR Doc. 88-13716 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25797; File No. SR-NYSE-88-03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange

On March 10, 1988, the New York Stock Exchange ("NYSE") filed a proposed rule change (File No. SR-NYSE-88-03), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ to permit registrars, in addition to transfer agents, to use facsimile signatures on stock certificates. On April 5, 1988, the Commission published notice of the proposed rule change in the *Federal Register*.² One comment supporting the proposal was received. This order approves the proposal for the reasons stated below.

I. Description

The proposed rule change amends the NYSE's policy governing transfer agent and registrar signatures on stock certificates. The proposed amendments are set forth in Sections 501.00 and 601.00 of the NYSE Listed Company Manual. The proposed amendments permit registrars, in addition to transfer agents, to use facsimile signatures on NYSE listed company stock certificates. In addition, registrars will be required to sign indemnification agreements with NYSE similar to those signed by transfer agents.

II. NYSE's Rationale

NYSE states that the current policy, adopted in 1964, permits the use of facsimile signatures on stock certificates by transfer agents providing certain documentation is filed with the NYSE. NYSE states that the policy was intended to continue requiring some human attention and inspection of certificates, and required registrars to continue to provide manual signatures.

NYSE states that the proposed rule change recognizes the fact that since 1964 transfer agents have instituted automated systems to facilitate security transfers. They also have placed great emphasis on control features which

address the validity of transfers and issuances. Registrars utilize comparable system-generated control reports which complete the balance check. The sophistication of these processes far surpasses the safeguards provided by the physical inspection of certificates. NYSE believes that the requirement that each certificate be manually inspected and signed no longer serves its intended purpose, and has for the most part become a clerical function. NYSE believes that it and its shareholders will be further protected by the agreements each agent executes with NYSE assuming full liability for listed securities processed. Fulfillment of the provisions of these agreements is subject to internal and outside audit.

III. Discussion

The Commission believes that the proposal is consistent with section 6 of the Act in that it, among other things, is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 17A of the Act because it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions and is consistent with the safeguarding of funds and securities for which it is reasonable.

The Commission agrees with the NYSE that increased automation over the last two decades, with emphasis on control features which address the validity of transfers and issuances, have made the manual inspection and signature an unnecessary procedure. Allowing registrars, as well as transfer agents, to use facsimile signatures will further increase efficiency in the transfer of securities by reducing handling problems and improving turnaround time.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 6 and section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-88-03) be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 25530 (March 30, 1988), 53 FR 11157.

Dated: June 10, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13717 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16432; (811-5209)]

Criterion Asset Backed Income Fund, Inc.; Application

June 13, 1988.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Criterion Asset Backed Income Fund, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on May 27, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 5, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1000 Louisiana, Houston, Texas 77002.

For Further Information Contact: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland, (301) 258-4300).

Applicant's Representations

1. On June 18, 1987, Applicant filed Form N-8A to register under the 1940 Act as a closed-end, diversified management investment company. On

June 18, 1987, Applicant also filed Form N-2 pursuant to the Securities Act of 1933 to register 11,500,000 shares of common stock but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

2. On May 6, 1988, Applicant filed Articles of Dissolution with the State Department of Assessments and Taxation in the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-13719 Filed 6-16-88; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 305-32]

Initiation of Section 305 Investigation; Korean Patent Practices

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of decision to initiate an investigation under section 305 of the Trade Act of 1974, as amended.

SUMMARY: Pursuant to 19 U.S.C. 2415, the U.S. Trade Representative has determined to initiate a fact-finding investigation of the Republic of Korea's policies and practices with respect to granting and enforcing patent rights. A U.S. government interagency task force headed by Peter Allgeier, Assistant U.S. Trade Representative, and Michael Kirk, Assistant Commissioner of Patents for External Affairs, U.S. Patent and Trademark Office, will examine and review current practices in the Korean Patent Office (KPO) and Korean courts relating to enforcement of patent rights. The task force will issue a preliminary report by December 1, 1988. In light of this decision, USTR has decided not to initiate a section 301 investigation at this time.

EFFECTIVE DATE: June 13, 1988.

FOR FURTHER INFORMATION CONTACT: Peter Allgeier, Assistant U.S. Trade Representative, (202) 395-3430, Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative, 600 17th

Street NW., Washington, DC, 20506; or Michael K. Kirk Assistant Commissioner of Patents for External Affairs, (202) 557-3065, U.S. Patent and Trademark Office, Box 4, Arlington, Virginia 22031.

SUPPLEMENTARY INFORMATION: The U.S. Trade Representative has decided to initiate a fact-finding investigation into Korean practices and policies related to obtaining and enforcing patent rights. In August 1986, the United States and the Korean government reached an agreement resolving a self-initiated section 301 investigation concerning Korea's policies and practices relating to the protection of intellectual property rights. The Korean government has committed to provide effective enforcement of intellectual property laws including enforcement of its patent laws.

USTR has been following developments in the enforcement of intellectual property rights in Korea. Two U.S. pharmaceutical firms, Bristol-Myers Co. and Squibb Corp., have filed and subsequently withdrawn petitions requesting investigations under section 301 of the Trade Act of 1974, concerning problems that those firms have experienced in enforcing patent rights in Korea. On August 29, 1988, Bristol-Myers refiled their section 301 petition. I have decided, however, that it is essential to determine whether systemic problems exist with enforcing patent rights in Korea as difficulties may extend beyond those experienced by this firm. Thus, the task force will consider the experience of other firms in Korea, as well as that of Bristol-Myers and Squibb.

USTR will seek information and advice from U.S. sources and the Korean government to determine whether general, systemic problems exist in Korea related to the enforcement of patent rights. If a broad based problem exists, we will take whatever measures are necessary to address that problem.

Among the specific issues that the task force expects to address are: (1) Interpretation of patent claims by the KPO and assessment of prior art; (2) possible discrimination in KPO granting practices; (3) interpretation of patent claims by the Korean courts in infringement actions; and (4) adequacy of sanctions for patent infringement.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-13699 Filed 6-16-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-88-23]

Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before July 6, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone 202/X267-3636.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 9, 1988.
Barbara E. Swank,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No. and petitioner	Regulations affected	Description of relief sought
24437—James A. Gross, Reaction Research Society, Inc.	101.23(b)	Petitioner requests renewal of current Exemption No. 4357 to continue testing unmanned reockets 8 nautical miles west of Randsburg, California, not to exceed 20,000 feet or 3 statute miles radius of the site.

[FR Doc. 88-13698 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-832]

Ocean Carriers, Inc.; Application for Modification of Operating-Differential Subsidy Agreement, Contract MA/MSB-167

By letter dated May 20, 1988, Ocean Carriers, Inc. (Ocean Carriers), pursuant to Title VI of the Merchant Marine Act, 1936, as amended (Act), and Article II-25 of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-167, requested approval for modification of Article I-3(a) of ODSA Contract MA/MSB-167 to incorporate the OMI MISSOURI and the OMI SACRAMENTO and for approval to establish an operating-differential subsidy (ODS) sharing system among the vessels named in the ODSA.

The applicant advises that its request for modification of its ODSA to include the dry bulk vessels would result in new operating flexibility for the dry bulk vessels. Recognizing, however, that current Administration policy prevents the award of new ODS contracts, the applicant is proposing the inclusion of dry bulk vessels in a contract that originally covered tankers and the authority to establish an ODS sharing system in which the existing ODS contract would be expanded to include the OMI MISSOURI and the OMI SACRAMENTO on a basis where in any year only four ship-years worth of ODS would be payable.

The applicant further states that the OMI dry bulk vessels are foreign-built vessels acquired under section 615 of the Act. In addition, the applicant points out that its request to modify its ODSA

would not in any way expand the current obligation of the Federal Government under the ODSA.

The applicant proposes to bareboat charter from OMI Corp. (OMI) the OMI MISSOURI and the OMI SACRAMENTO, two geared bulk carriers and then time charter these vessels to OMI. Both vessels are currently operating in the preference trade, serving Egypt, Bangladesh, Indonesia and other countries.

In support of its request, the applicant avers that its structure for operation of these vessels under ODS is also consistent with the operating structure determined by the Maritime Administration not to fall within the relationships prescribed by sections 804 and 805 of the Act.

The OMI MISSOURI and the OMI SACRAMENTO are 48,000 DWT geared bulk carriers that were built in 1983 and acquired pursuant to section 615 of the act. These vessels, as pointed out by the applicant, already operate in the preference trade. Applicant asserts that their entry into the foreign commercial dry bulk trade would improve the presence of the U.S.-flag fleet in a trade where U.S.-flag service in the U.S. foreign commerce is the primary goal of the ODS program and the Act. Applicant further believes that to the extent that vessels operate in the foreign trade, U.S.-flag service in the foreign trade will be strengthened.

According to the applicant, more efficient use of ODS assistance to the U.S.-flag fleet is essential if the U.S. merchant marine is to remain competitive over the upcoming decade. Furthermore, it believes that its proposal is consistent with the goals and objective of the Act, and offer operators the opportunity to find ways in which to use ODS to support U.S.-flag operations to the maximum extent permitted within current commitments.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room 7300 Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Any person, firm, or corporation having any interest in such application and desiring to submit comments thereon must file comments in triplicate with the Secretary, Maritime Administration by close of business on July 8, 1988.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application,

as filed or as may be amended. The Maritime Administration will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: June 14, 1988.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88-13757 Filed 6-16-88; 8:45 am]

BILLING CODE 4910-81-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The

department or staff office issuing the form, (2) the title of the Form, (3) the agency form number, if applicable, (4) as description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 18, 1988.

Dated: June 10, 1988.

By Direction of the Administrator.

Frank E. Lalley,
Director, Office of Information, Management
and Statistics.

Extension

1. Department of Veterans Benefits.
2. Certification of Attendance (For Courses Not Leading to a Standard College Degree and Farm Cooperative Courses Under Chapters 30, 32, 34 and 35, Title 38, U.S. Code; Chapter 106, Title 10, U.S. Code; and Section 903, Pub. L. 96-342.
3. VA Form 22-6553a.
4. This form is used by trainees and schools to certify attendance for courses not leading to a standard college degree and farm cooperative courses.
5. Monthly.
6. Individuals or households; State or local governments; Non-profit institutions; and Small businesses or organizations.
7. 363,222 responses.
8. 60,537 hours.
9. Not applicable.

[FR Doc. 88-13743 Filed 6-16-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 117

Friday, June 17, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on June 12, 1988, from 12:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

¹ Closed Session

1. The Federal Land Bank of Jackson, in receivership, and the Federal Land Bank Association of Jackson, in receivership.

Dated: June 15, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13824 Filed 6-15-88; 3:39 pm]

BILLING CODE 6705-01-M

¹ Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(6), (8) and (9).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 22, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment of proposed interagency policy statement regarding interest rate swaps.
2. Proposed extensions and revisions of the Reports of Deposits (FR 2900, 2950/2951, 2000, 2001, 2910a and q, 2930/2930a).
3. Proposals regarding treatment and reporting of proceeds from outstanding sales of short-term loans made under long-term commitments to nonexempt entities.

Discussion Agenda

4. Proposed response to a request by the General Accounting Office for Board comment on a final report regarding supervision of country risk and international lending.

5. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: June 14, 1988.

William W. Wiles

Secretary of the Board.

[FR Doc. 88-13790 Filed 6-15-88; 10:06 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, June 22, 1988, following a recess at the conclusion of the meeting.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building renovation proposals regarding the Federal Reserve Bank of St. Louis.
2. Proposed purchase of office automation equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 14, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13791 Filed 6-15-88; 10:06 am]

BILLING CODE 6210-01-M

Corrections

Federal Register

Vol. 53, No. 117

Friday, June 17, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

Correction

In notice document 88-12505 beginning on page 20357 in the issue of Friday,

June 3, 1988, make the following correction:

On page 20357, in the third column, in the paragraph following the table, in the fourth line, after "shall" insert "not".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0040]

Sulfamethazine; Availability of National Center for Toxicological Research's Technical Report

Correction

In notice document 88-11076 beginning on page 17850 in the issue of Wednesday, May 18, 1988, make the following corrections:

1. On page 17850, in "Table 1", under "Duration of exposure (mo)", in the second column head "19" should read "18".

2. On page 17851, in "Table 2", under "Duration of exposure (mo)", in the second column head "19" should read "18".

3. On the same page, in "Table 3", in the heading after "Levels" the text in parenthesis should read "(100 ml)".

4. On page 17852, in the first column, in the first paragraph, in the fourth line, "those" should read "these".

BILLING CODE 1505-01-D

Federal Register

Friday
June 17, 1988

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980

General Revision of Guaranteed Farmer
Program Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

General Revision of Guaranteed Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its guaranteed loan regulations. This action is necessary to implement the provisions of the Agricultural Credit Act of 1987, to make revisions which will encourage lender participation in the guaranteed loan program and provide clarification in the processing and servicing of guaranteed operating (OL) and farm ownership (FO) loans. The intended effect is to incorporate the legislation in existing FmHA regulations.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. The Preliminary Regulatory Impact Analysis Statement (PRIA) and all written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farmer Programs Loan Making Division, USDA, Room 5440-S, Washington, DC 20250, telephone (202) 475-4017.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be major, because it will result in an annual effect on the economy of \$100 million or more.

Summary of PRIA

These regulations are part of a broad set of regulations that are being developed to implement the FmHA provisions of the Agricultural Credit Act of 1987. The broad set of regulations has been determined to be a major action, because it includes provisions relating to the restructuring of delinquent loans that are expected to have more than a \$100 million impact on the economy. Accordingly, a Preliminary Regulatory Impact Analysis (PRIA) is being prepared, but it is being limited to analysis of the restructuring provisions. The analysis is expected to show that these restructuring provisions will result in significant write-downs of FmHA debts for borrowers who qualify. These write-downs however, are not expected to increase federal outlays, because FmHA budget estimates already reflect reduced repayments on the loans that will be written down. Further, the Agricultural Credit Act of 1987 provides virtually no discretion regarding the implementation of the write-down provisions.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 2372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.404—Emergency Loans
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act

of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Discussion of the Major Items of the Proposed Rule

The agency is proposing to remove § 1980.190, "Recreation loans," of Subpart B of Part 1980 from its regulations. This is a minor program. Only three guaranteed loans were made. The program has not been funded since Fiscal Year 1981. Indications are that it will not receive funding in the foreseeable future. The agency is also proposing to remove § 1980.170, "Emergency Loans," of Subpart B of Part 1980 from its regulations. The program for guaranteed emergency loans has been under suspension for a number of years. Lenders have shown very little interest in the program due to the complicated process of calculating losses and additional paperwork involved in applying for the subsidized interest rate. It has been a difficult program for the agency to administer and monitor. The agency also proposes to remove the "Debt Adjustment Program—Farmers Home Administration (FmHA) Guarantees of Loans with Accomplishing Debt Adjustment by Lender," which is Exhibit B of Subpart B of Part 1980. Lenders have shown very little interest in the program and with the availability of the Interest Rate Buydown Program FmHA would expect a continually decline in lender participation in the program.

In Fiscal Year 1987, 182 guaranteed loans were debt adjusted by lenders. This represented about 1 percent of the total loans guaranteed during that period. Thus far, in Fiscal Year 1988, 12 loans have been debt adjusted out of a total of 1448 guaranteed loans which have been obligated. The deletion of these regulations will reduce the agency's cost of updating and publishing regulations for programs no longer in use. As a result of present and proposed budget cuts, the agency must reduce costs wherever it can.

The agency proposes to revise Subpart A of Part 1980, "Guaranteed Loans" to (1) allow Agricultural Credit Corporations to be designated as eligible lenders for Farmer Program loans. Present regulations prohibit the participation of these institutions in the guaranteed farm loan program. These institutions receive loan funds from the area Federal Intermediate Credit Bank (FICB) and are regulated by the Farm Credit System (FCS) which is in turn regulated by the Farm Credit Administration (FCA), a federal agency. These lenders have expressed an

increasing willingness to participate in the guaranteed loan program. In many areas of the country, these lenders could provide a substantial amount of credit to FmHA guaranteed loan applicants where other commercial sources of credit would not be available, therefore, reducing the demand for direct federal outlays; (2) provide that all guarantees for Farmer Programs loans will be issued at 90 percent. This recognizes the fact that most Farmer Program guarantees are issued at 90% anyway; (3) clarify the definition of "similar types of transactions" to specify that the same charges and fees may be charged to guaranteed loan applicants that the lender charges non-guarantee borrowers for the type of loan requested; (4) require in the exception authority provision that a request for an exception to the eligible lender provision must document that the lender is subject to regulation and supervision; (5) allow Farm Credit System board (FCS) members to obtain an FmHA guarantee under certain circumstances. Present FmHA regulations prohibit assistance to members of FCS board of directors. This places an undue hardship of these board members if the borrower/member's financial position deteriorates to the point where the bank's regulators require a guarantee of the loan. The proposed regulations provide that any FCS board members receiving an FmHA guarantee must have their loan request and the servicing actions on their loans handled by the appropriate district bank. This same criteria has been incorporated in the FCS regulations to prevent any conflict of interest from arising in the handling of these accounts; and (6) make other necessary clarifying and editorial changes.

The agency proposes to revise Subpart B of Part 1980, "Farmer Program Loans," to: (1) Provide additional guidance on defining the terms borrower, nonfarm enterprise, character, and management ability. Many of the projects now listed as nonfarm enterprises were never really recognized in the rural community as farming enterprises. Many applicants have been bewildered when they were told they did not have the character needed to receive a loan. They believed the Agency was making reference to their moral character. The Agency makes loans to corporations, cooperatives, partnerships, joint operations as well as individuals. This has caused confusion as to what constitutes a borrower. Therefore, the Agency is clarifying this definition. If a husband and wife both apply for a loan, they will be considered a joint operation or one of them may

apply independently as an individual. The amendment proposes to require all members of an entity to provide a current financial statement and to pledge all their assets along with the assets of the entity to secure the loan. The definition of a joint operation was revised to differentiate it from a partnership. (2) Remove the Administrator's authority to suspend the issuance of guaranteed loans on surplus agricultural commodities. (3) Clarify lien priorities and the application of proceeds from the sale of collateral when the lender holds guaranteed and non-guaranteed loans on the same borrower. This amendment to the regulations is necessary to provide an understanding of the relationship between the FmHA guaranteed loan and any existing non-guaranteed loan to the borrower held in the lenders loan portfolio. (4) Clarify that lien positions on real estate are separate and identifiable collateral. (5) Limit the use of balloon payments. Balloon payments often mask cash flow problems and cause severe losses to the government. Security can depreciate over a period of time. Balloon payments sometimes encourage borrowers to over extend their financial resources rather than realize their true financial situation. (6) Clarify operating loan (OL) purposes and loan limitations. (7) Outline maximum dollar amounts when an individual is a member of an entity. (8) Allow loans to a member of an entity as well as the entity itself. This will remove any inconsistencies in the present regulations. It will also clarify the maximum amount of loan that can be authorized in such cases. (9) Allow farm ownership loans on a leasehold interest in Hawaii as permitted by statute. A great deal of land is available for farming on long-term leases. (10) Clarify the selection of a qualified appraiser by lenders. This amendment is necessary to reduce conflicts which may occur when a question arises concerning the value of the security (*i.e.*, the lender's loss claim based on appraised values). It will assure that FmHA and the lender have agreed prior to loan approval that the appraiser is qualified. (11) Require a review of each loan/line of credit within 45 days of closing. Present regulations call for timely investigations to determine of the loan/line of credit is being properly serviced. In some instances this has resulted in the supervisor not properly monitoring the loan/line of credit after loan closing. This may result in serious problems developing which causes excessive loan losses. This amendment will assure the lender has the required information in

their file and is complying with the loan closing conditions. It will also assure that the supervisor has a working knowledge of the loan/line of credit and can determine at an early date if any problems are occurring which need to be corrected by the lender to assure that the objectives of the loan are met. Requiring FmHA to review at least 20 percent of the lender's loan/line of credit portfolio each year will also assure that the lender is properly servicing those loans/lines of credit with an extended loan term. Visits by FmHA to guaranteed loan borrowers will be with the concurrence of the lender. It is the lenders responsibility to service the loans/line of credit and only in times of extreme problems would the supervisor become involved with the guaranteed borrower. (12) Require lenders to obtain financial statements from borrowers at least annually. Current regulations require approved lenders to obtain financial statements semiannually. This requirement in many cases exceeds the schedule of reporting placed on non-approved lenders. Collection of semi-annual financial statements is not a recognized practice in the commercial lending sector. If the lender believes that financial statements should be collected more frequently than annually, the lender may do this at its discretion. (13) Provide for the extension of the Interest Rate Buydown Program through September 30, 1993. It also amends the regulations to permit FmHA to provide a farmer with a listing of eligible lenders and lenders who desire to be eligible lenders when requested. (14) Provide for a demonstration program with the Farm Credit System (FCS) whereby FmHA will buydown the interest rate of a guaranteed farm ownership loan by 4 percentage points when an eligible applicant purchases a family-size farm which the Farm Credit System has in inventory. FmHA will grant the lender a 90 percent guarantee. If the lender reduces the interest rate by an additional percentage point, FmHA will guarantee the loan at 95 percent. The demonstration program will be terminated on January 6, 1991. Terms of the buydown will be for 5 years. This demonstration project will allow the Farm Credit System a means to sell additional acquired property to eligible FmHA applicants who have been unable to obtain family-size farms. (15) In addition to the other servicing authorities available, allow lenders to write down the principal indebtedness of a borrowers account, with an accompanying loss payment by FmHA. If real estate security was involved,

lenders would then enter into a Shared Appreciation Agreement with borrowers for a period not to exceed 10 years; (16) Require lenders to participate in State farm mediation programs; (17) Prohibit the use of demand notes. Some lenders obtain an FmHA guarantee and immediately demand full payment from the borrower. The result is that FmHA usually winds up paying the lender for a loss without the borrower having been given a chance to make the loan work; (18) Provide a liquidation guide. This will clarify the procedures for liquidation of an account; (19) Prohibit the taking of a new note/line of credit agreement when a rescheduling or reamortization occurs. Questions have arisen over how an existing Loan Note Guarantee or Contract of Guarantee would cover such a new instrument; (20) Remove the ability of a lender being allowed to charge a rate which exceeds one percent (1%) above the rate the lender charges its average farm customer. Guaranteed loans are normally made to farmers who are high risk customers of the lender. The lender is allowed to pass on the one percent (1%) fee to the farmer and the ability to charge an additional 1% in interest rates places an additional financial burden on the guaranteed customer which could increase the likelihood of failure; and (21) Remove obsolete material and make other necessary clarification and editorial changes.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—
Agriculture.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, of the Code of Federal Regulations as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.6 paragraph (a)(2) is revised to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

(2) *Borrower.* (B&I and RH loans only). All parties liable for the loan or any part thereof. For Farmer Programs loans, see § 1980.106(b)(3) of Subpart B of this part for the definition of borrower.

* * *

3. Section 1980.13(b), the introductory text is revised to read as follows:

§ 1980.13 Eligible lenders.

(b) *An eligible lender is:* Any Federal or State chartered bank, Federal Land Bank, Production Credit Association, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, mortgage company that is a part of a bankholding company, or an insurance company that is regulated by the National Association of Insurance Commissioners. For Farmer Program loans an Agricultural Credit Corporation that is a subsidiary of any Federal or State chartered bank is an eligible lender. The above entities must be subject to credit examination and supervision by either an agency of the United States or a State. (Credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a state agency are eligible lenders only for Farmer Programs Guaranteed loans). Only those lenders listed in this paragraph are eligible to make and service guaranteed loans and such lender must be in good standing with its licensing authority and has met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located, and the loan making and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

* * *

4. Section 1980.20 is revised to read as follows:

§ 1980.20 Loan guarantee limits.

(a) The maximum loss covered by the Loan Note Guarantee, Form FmHA 449-34 or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of:

(1) The percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or (2) the percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be informed in writing on Form FmHA 449-14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore.

(See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of Subpart E of this part.

(b) Except for Farmer Programs loans, FmHA will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicants' principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

(c) For Farmer Programs loans, the loan will be guaranteed at 90 percent, except as otherwise provided in Exhibit E to Subpart B of this part.

5. Section 1980.22 (a) is revised to read as follows:

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * *

6. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA Approval Official. The determination will be based upon FmHA's review of Form FmHA 1940-20, "Request for Environmental Information," and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. The FmHA State Director will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases FmHA is responsible for assuring that the requirements of section 102(2)(c) of

the National Environmental Policy Act of 1969 (NEPA), and 7 CFR Subpart G of Part 1940 of this chapter are met.

7. Section 1980.41 paragraph (a) is revised to read as follows:

§ 1980.41 Equal opportunity and nondiscrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with Title V of Pub. L. 93-495 the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act. (See 12 CFR Part 202.) Such compliance will be accomplished prior to loan closing.

8. Section 1980.85 is revised to read as follows:

§ 1980.85 Exception authority.

The Administrator may in individual cases grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be in writing by the State Director and submitted through the appropriate Assistant Administrator. Requests must be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. In addition, any request for an exception to § 1980.13(b) of this subpart must document that the lender involved has furnished acceptable evidence of regulation and supervision.

9. Subpart A, Appendix B—Form FmHA 449-35 is revised to read as follows:

Appendix B

Position 5

FORM APPROVED
OMB NO: 0575-0024
USDA-FmHA
Form FmHA 449-35
(Rev. 5-88)

LENDER'S AGREEMENT*

Type of Loan: _____

*This report contains certain agreements to provide future reports and information which must be agreed to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511.

Applicable 7 CFR Part 1980 Subpart
FmHA Loan Ident. No. _____

_____ (Lender) of
_____ has made a loan(s)
to _____ (Borrower)
_____ in the principal
amount of \$ _____ as
evidenced by _____ note(s)
(include Bond as appropriate) described as
follows: _____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

THE PARTIES AGREE:

I.

The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II.

Full Faith and Credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably

prudent lender would act up to the time of loan maturity or until a final loss is paid.

III.

Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449-36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the

original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV.

The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V.

The Lender certifies that none of its officers or directors, stockholders, or other owners (except stockholders in Federal Land Bank and Production Credit Associations with normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors of a Federal Land Bank or Production Credit Association, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI.

The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII.

Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII.

Lender certifies it has paid the required guarantee fee.

IX.

Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed, rescheduled or written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership,

insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a loan guaranteed under 7 CFR Part 1980, Subpart B is involved, the Lender shall participate in any farm credit mediation program of a state in accordance with rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

X.

Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify

FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1980.
5. Reorganization.
6. Liquidation.
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's Lender's, and the Holder(s) approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any

loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the

amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI.

Liquidation.

If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than \$200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of \$200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for

the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc., when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an

estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

- a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

- b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender

provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 499-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII.

Protective Advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of \$500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII.

Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even

though such expenditures or loans will not be guaranteed.

XIV.

Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV.

Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30 the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XVI.

Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII.

Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII.

Notices.

All notices and actions will be initiated through FmHA for _____ (State) with mailing address at the date of this instrument _____

Dated this _____ day of _____, 19____.

ATTEST: _____ (SEAL)

LENDER:

By _____
Title _____

UNITED STATES OF AMERICA
Farmers Home Administration

By _____
Title _____

10. Subpart A. Appendix E—Form FmHA 1980-38 is revised to read as follows:

Position 2

Appendix E

FORM APPROVED

OMB NO. 0575-0079

USDA-FmHA

Form FmHA 1980-38

(Rev. 5-88)

LENDER'S AGREEMENT (Line of Credit)*

Applicable 7 CFR Part 1980, Subpart

_____, (Lender) of _____ has established a line of credit to _____ (Borrower) for the fiscal period ending _____, 19____, for the purpose of _____ in the maximum sum of \$ _____ as evidenced by a "Line of Credit Agreement" dated _____, 19____.

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed _____ % of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement.

THE PARTIES AGREE:

I.

The maximum loss covered under the Contract of Guarantee will not exceed _____ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II.

Full Faith and Credit.

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the

*This form is used by lenders to meet certain conditions precedent to issuance of a Contract of Guarantee in Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan cases. This report contains information that is required to provide future reports and information which must be agreed to by the lender in order to obtain the benefit of an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511

extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III.

Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retail or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

IV.

The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V.

The Lender certifies that none of its officers or directors, stockholders, or other owners (except stockholders in Federal Land Bank and Production Credit Associations with normal stockshare requirements for

participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors of a Federal Land Bank or Production Credit Association, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI.

The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee.

VII.

Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII.

If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee.

IX.

Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance

obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to \$_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

12. Monitoring loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity. Failure to do so will be considered negligent servicing and any loss attributed to such negligent servicing will not be paid by FmHA, as explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If an Operating Loan Line of Credit is involved, the Lender shall participate in any farm credit mediation program of a State in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

X.

Defaults.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

XI.

Liquidation.

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.

3. A proposed method making the maximum collection possible on the indebtedness.

4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation proposal.* FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation. Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.

2. When the Lender is conducting the liquidation, it may request tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to

the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII.

Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of \$500. Protective advances include, but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII.

Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV.

Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the

percentage of the unguaranteed portion of the loan.

XV.

Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI.

Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVII.

Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligation

upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII.

Notices.

All notices and actions will be initiated through the FmHA County Supervisor for (County) _____
(State with mailing address at the date of this instrument: _____)

Dated this _____ day of _____, 19____.

ATTEST: _____ SEAL

LENDER:

By _____
Title _____
UNITED STATES OF AMERICA
Department of Agriculture
Farmers Home Administration
By _____
Title _____

11. Subpart A, Appendix H—Form FmHA 1980-58 is revised to read as follows:

Appendix H
FORM APPROVED
OMB NO. 0575-0079
USDA-FmHA
Form FmHA 1980-58
(Rev. 5-88)

INTEREST RATE BUYDOWN AGREEMENT

☐ Loan Note Guarantee
☐ Contract of Guarantee
Type of Loan _____

7 CFR Part 1980

Subpart B

State _____

County _____

Date of Note _____

Borrower _____

Lender _____

Lender's Address _____

FmHA Loan ID No. _____

Lender's IRS ID Tax No. _____

Principal Amount of Loan _____

The principal amount of loan or line of credit is evidenced by _____ note(s) or line of credit agreement(s) described below. This instrument is attached to note or line of credit agreement _____ in the face amount (ceiling amount for a line of credit) and is number _____ of _____.

Copies of the lender's Loan Note Guarantee, or Contract of Guarantee for a line(s) of credit, and any Assignment Guarantee Agreement, if applicable (Loan Note Guarantee cases only) are attached to this Agreement as a part of it.

Lender's ID No.	Note/Line of Credit Agreement	Interest Rate (If variable calculate in accordance with Part 1980, Subpart B Exhibit D, Paragraph IV I)	Lender Write Down	FmHA Interest Rate Buydown

This agreement is effective beginning _____ and expires on _____.

In consideration of the subject lender's write down of interest rate on the above borrower's account by _____ percentage points, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for _____ percentage points of the write down.

Conditions of Interest Rate Buydown

1. Buydown Rates.

The buydown rate set forth in this agreement will remain constant during the term of this agreement.

2. Interest Rate Buydown Payments.

FmHA's payments made in connection with the interest rate buydown will be calculated using 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980-19, "Guaranteed Loan Closing Report," the preferred method, which may not change once established.

3. Annual Interest Rate Buydown Claims and Payments.

The initial Interest Rate Buydown claim will be prepared by the lender using form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about a date 12 months from the date of this agreement, unless it is the first or last claim which may be submitted in accordance with the first and last due date on the borrower's promissory note. Subsequent claims will be filed by the lender on or about a date 12 months thereafter but no later than the anniversary date of filing of the initial interest rate buydown claim. Upon full payment of the note or line of credit agreement the lender will immediately

prepare Form FmHA 1980-24 and mail a copy to the FmHA servicing office.

4. When Interest Rate Buydown Payments Cease.

For Loan Note Guarantee cases, when FmHA purchases a portion of a loan, interest buydown payments on that portion will cease. Interest rate buydown payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, when the lender accelerates the borrower's account, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government.

5. Cash Flow.

The lender certifies that the interest rate reduction to the borrower results in a reduced, equally amortized payment schedule for the term of this agreement so that the borrower's operation projects a positive cash flow on all income and expenses including debt service for the term of this agreement. A typical plan of operation must show that a positive cash flow can be expected during the initial 24 month buydown period. For those

loans/line of credit agreements with terms less than 24 months then the operation must show a positive cash flow for the term of the loan/line of credit agreement. In cases where the term of the loan or line of credit agreement exceeds the term of this agreement, the lender certifies that the borrower is projected to have a positive cash flow on all income and expenses including debt service after this agreement expires. Cash flow and positive cash flow are defined in Exhibit D or Exhibit E to Subpart B of Part 1980 as applicable, and must be calculated in accordance with § 1980.113(d)(8) of Subpart B of Part 1980.

6. Cancellation of Interest.

Lender certifies that the amount of interest written down on subject borrower's account will be permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

7. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown. (Loan Note Guarantee Cases Only). See also item 10 of Form FmHA 449-36.

In the case of converting a guaranteed loan without an interest rate buydown to one with such a buydown, the lender must obtain the holder's consent in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. Any repurchase will only be made after the lender obtains FmHA's written approval. In the event the lender assigns the guaranteed portion of the loan to a holder(s) the Assignment Guarantee Agreement (Form FmHA 449-36) will be amended as provided in 7 CFR, Part 1980, Subpart B, Exhibit D, paragraph VI B2 or Exhibit E, paragraph VI B2, as applicable to reflect the reduced interest rate.

8. Regulatory Changes.

This Agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provisions of this agreement.

9. Cancellation.

The Interest Rate Buydown Agreement is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this Agreement is executed or for which the lender participates in or condones.

10. Excessive Interest Rate Buydown.

The Government may amend or cancel this agreement and collect from the lender any amount of reduction granted as a result of incomplete or inaccurate information, computation errors, or other circumstances which resulted in interest rate buydown payments that the lender was not entitled to receive.

11. Access to Lender's Files.

Lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining interest rate buydown claims.

ATTEST: _____ (SEAL)

Address: _____

ATTEST: _____ (SEAL)

LENDER:

By _____
Title _____

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By _____
Title _____

ACKNOWLEDGED

Borrower _____
Co-Borrower _____

12. In Subpart B, §§ 1980.101-1980.200 are revised to read as follows:

Subpart B—Farmer Program Loans

Sec.

- 1980.101 Introduction.
- 1980.102-1980.105 [Reserved]
- 1980.106 Abbreviations and definitions.
- 1980.107 Full faith and credit.
- 1980.108 General provisions.
- 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.
- 1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).
- 1980.111-1980.112 [Reserved]
- 1980.113 Receiving and processing applications.
- 1980.114 FmHA evaluation of applications.
- 1980.115 County Committee review.
- 1980.116 Review of requirements.
- 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.
- 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.
- 1980.119-1980.121 [Reserved]
- 1980.122 Substitution of lenders.
- 1980.123 Transfer and Assumption of Farmer Program loans.
- 1980.124 Consolidation, rescheduling, reamortizing, and deferral.
- 1980.125 Debt write down.
- 1980.126 Mediation.
- 1980.127-1980.128 [Reserved]
- 1980.129 Planning and performing development.
- 1980.130 Loan servicing.
- 1980.131-1980.135 [Reserved]
- 1980.136 Protective advances.
- 1980.137-1980.138 [Reserved]
- 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.
- 1980.140-1980.144 [Reserved]
- 1980.145 Defaults by borrower.
- 1980.146 Liquidation.
- 1980.147 Graduation.
- 1980.148 Appeal procedure.
- 1980.149 Access to lender's records.
- 1980.150-1980.152 [Reserved]
- 1980.153 FmHA forms.
- 1980.154-1980.174 [Reserved]
- 1980.175 Operating loans.
- 1980.176-1980.179 [Reserved]
- 1980.180 Farm Ownership loans.
- 1980.181-1980.184 [Reserved]
- 1980.185 Soil and Water loans.
- 1980.186-1980.199 [Reserved]
- 1980.200 OMB control number.

Exhibits to Subpart B

* * * * *

Subpart B—Farmer Program Loans

§ 1980.101 Introduction.

(a) *Policy.* This subpart, supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), and Soil and Water (SW) loans. It also contains regulations concerning the servicing of these loans as well as the servicing of Emergency (EM) and Recreation (RL) loans, which are no longer guaranteed by FmHA. It is the policy of FmHA to guarantee loans made to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap, providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans, and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Rate Buydown Program for Guaranteed Operating (OL) loans including lines of credit, Guaranteed Farm Ownership (FO) loans, and Guaranteed Soil and Water (SW) loans. Exhibit E provides policies and procedures for an Interest Rate Reduction Program for a demonstration project to purchase Farm Credit System family size inventory farms. Exhibit F provides the procedures for the recapturing of shared appreciation when a lender requests a write down on the debt. Appendix A of this subpart (available in any FmHA office) provides information on FmHA-lender interactions during liquidation.

(b) *Program administration.* Farmer Programs are administered by the FmHA Administrator through a State Director, who serves each State through District Directors and County Supervisors. The County Supervisor is the focal point for the program and is the local contact person for processing and servicing activities, even though this Subpart refers in various places to the

duties and responsibilities of other FmHA employees.

(c) *Administrative provisions.* Within this subpart there are administrative provisions which, for the benefit of the State Directors, District Directors, and County Supervisors, set out the internal duties and responsibilities of FmHA personnel and outline the procedures to be followed in carrying out the requirements of the program. These provisions are identified as "ADMINISTRATIVE" and correspond to the sections of this subpart which they follow.

(d) *References.* Sections 1980.101-1980.174 pertain to the FO, EM, OL, RL, and SW loan programs. The requirements set forth in Subpart A of Part 1980 of this chapter which are not in conflict with the provisions set forth in this subpart must also be met.

(e) *Type of guarantee.*—(1) *Loan Note Guarantee.* Lenders desiring to sell the guaranteed portion of fixed amount and term loans will use the method contained in Subpart A of this Part. In accordance with that method, loans may be made by a lender and guaranteed by issuance of Form FmHA 449-34, "Loan Note Guarantee."

(2) *Contract of Guarantee (Operating Loans—Line of Credit only).* Lenders desiring a guarantee on a "line of credit" will use the method contained in Subpart A of this part. Line of credit loans are guaranteed by Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)." The amount of loan may not exceed the line of credit ceiling set forth in the contract. This procedure will be followed for operating purposes—line of credit only. (See § 1980.175(c)(2) of this subpart.)

§§ 1980.102-1980.105 [Reserved]

§ 1980.106 Abbreviations and definitions.

(a) *Abbreviations.* See § 1980.6 of Subpart A of this part.

(b) *Definitions.* The following definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of Subpart A of this part.

(1) *Applicant.* The party applying for a guaranteed loan or line of credit.

(2) *Approval official.* An FmHA field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA office.

(3) *Borrower.* When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the corporation, cooperative, partnership, or joint operation is the borrower.

(4) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm(s).

(5) *Corporation.* For the purpose of this subpart, a private domestic corporation recognized as a corporation by the laws of the State(s) in which the entity will operate a farm(s).

(6) *Family farm.* A farm which:

(i) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(ii) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(A) Pay necessary family living and operating expenses.

(B) Maintain essential chattel and real property.

(C) Pay debts.

(iii) Is managed by:

(A) The borrower when a loan is made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan made to a cooperative, corporation, partnership, or joint operation.

(iv) Has a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by:

(A) The borrower and the borrower's family for a loan made to an individual.

(B) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to a cooperative, corporation, partnership, or joint operation.

(v) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

(7) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

(8) *Fish.* Any aquatic, gilled animal commonly known as "fish" as well as mollusks, or crustaceans (or other

invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

(9) *Fish farming.* The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

(10) *Fixture.* Generally an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.

(11) *Joint Operation.* Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. For example, husband and wife who apply for a loan together will be considered a joint operation.

(12) *Majority interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

(13) *Market value.* The amount which an informed and willing buyer would pay an informed and willing but not forced seller in a completely voluntary sale.

(14) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(15) *Nonfarm enterprise.* Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. The business must provide goods or services for which there is a need and a reasonably reliable market. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

(16) *Partnership.* Any entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(17) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash outflows plus the planned reserve for the planned period. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113(d)(8) of this subpart. A positive cash flow must show that a borrower will at least be able to:

(i) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(ii) Meet scheduled payments on all open accounts and carryover debts including delinquent taxes.

(iii) Provide a reserve of at least 10 percent in addition to the loan installments due and payable as recorded in Table K of the Farm and Home plan or other similar plans of operation acceptable to FmHA. The reserve will allow for new investments, risk and uncertainties associated with the farming operation.

(iv) Provide an average standard of living for an individual borrower and that borrower's family members or for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower and that operator's family members. Family members include the immediate members of the family which reside in the same household.

(18) *Recreation enterprise.* An outdoor enterprise which generates income and supplements or supplants farm or ranch income.

(19) *Related by blood or marriage.* As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

(20) *Security.* Property of any kind subject to a real or personal property lien. Any reference to "collateral" or "security property" shall be considered a reference to the term "security."

(21) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(22) *Subsequent loans.* Any loans processed by the Finance Office after it processes an initial loan for a borrower.

(23) *Veteran.* One who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps or Coast Guard under conditions other than dishonorable, who served on active duty in such forces: (1) During the period of April 6, 1917, through March 31, 1921; (2) during the period of December 7, 1941,

through December 31, 1946; (3) during the period of June 27, 1950, through January 31, 1955; or (4) for a period of not more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975. Discharges under conditions other than dishonorable include "clemency discharges."

§ 1980.107 Full faith and credit.

See § 1980.11 of Subpart A of this part.

§ 1980.108 General provisions.

(a) *Security, personal and corporate guarantees, and other requirements.* See §§ 1980.175(h), 1980.180(f) and 1980.185(f) for specific security requirements for the type of loan or line of credit being considered.

(1) *Security.* (i) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(ii) All security must secure the entire loan/line of credit. The lender may not take separate security to secure only that portion of the loan/line of credit not covered by the guarantee. The lender may not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan/line of credit. However, compensating balances or certificates of deposit as used in the ordinary course of business are not prohibited.

(iii) When FmHA and a guaranteed lender are involved in separate loans to the same borrower, separate collateral must be clearly identified for both the FmHA and the lender's loan. Different lien positions on real estate are considered separate collateral. FmHA will not subordinate any interest in property which secures an insured loan, except it may do so when crops are involved to permit a guaranteed lender to advance funds and perfect its security interest in the crop.

(iv) When the lender is involved in both a guaranteed loan and an unguaranteed loan to the same borrower and there will be like collateral for each, the guaranteed loan(s) must be adequately secured by (1) a lien on separate collateral that is clearly identifiable or (2) a lien of higher priority if the same collateral is used to secure both loans. When the same collateral secures both loans, the lender must agree in writing that scheduled installments on the guaranteed loan will be paid first.

(2) *Personal and corporate guarantees.* (i) for FO, SW and OL loans/lines of credit, personal

guarantees from all partners of a partnership, and all joint operators of a joint operation will be required. The lender and/or FmHA also may require that such guarantees be secured.

(ii) The lender may ask FmHA to make an exception to the requirement for personal or entity guarantees if the proposed guarantors cannot provide such guarantees due to other existing contractual obligations or legal restrictions. Applicants will give the lender written evidence of any such obligations or restrictions. FmHA's concurrence is required before an exception is made.

(iii) *Guarantors of applicants will:*

(A) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing) signed by the guarantors, and disclosing community or homestead property.

(B) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing) certified by an officer of the corporation.

(3) *Other requirements.* (i) The lender must ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties against the security of the borrower, and that no suits are pending or threatened that would adversely affect the borrower's interest in the collateral when the security instruments are filed and when final loan distribution is made.

(ii) Appropriate hazard insurance with a standard mortgage clause naming the lender as beneficiary may be required by the lender when deemed necessary.

(iii) When the lender believes it is necessary, life insurance will be required for the individual borrower or all members of the entity borrower and will be assigned or pledged to the lender. This life insurance may be decreasing term insurance. A schedule of life insurance available will be included as part of the application.

(iv) Worker's Compensation Insurance will be obtained as required by State law.

(v) The requirements found in Exhibit M to Subpart G of Part 1940 of this chapter will be met.

(b) *Preference.* When it appears that available funds will be inadequate to meet the needs of all applicants, the following preferences will apply:

(1) An application on hand from a veteran as defined in § 1980.106(b)(23) of this subpart will be given preference by the lender over an application from a nonveteran on file at the same time.

(2) An application on hand from an FmHA insured loan borrower will be given preference over one from an applicant who does not have an FmHA insured loan.

(3) An application for a loan for land purchase from a applicant who has a dependent family; or is an owner of livestock and farm implements necessary to successfully carry on a farming operation; or is able to make downpayments will be given preference over one from an applicant who does not meet any of these criteria.

(c) *Determining whether credit elsewhere is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loans/lines of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, a joint operation and the joint operators as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans and guaranteed or insured economic emergency loans.* Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO or SW guaranteed loans, or OL guaranteed loans/lines of credit, provided the total outstanding principal indebtedness for EE, FO, RL, SW, or OL guaranteed or insured loans/lines of credit to FmHA and/or an FmHA guaranteed lender would not exceed \$650,000.

Administrative

The County Supervisor will determine whether the lender is requiring the necessary security. If necessary, the assistance of the District Director or Farmer Programs Staff will be obtained.

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this subpart or subpart A of this part.

(1) *Repayment Schedules.*—In order for notes to be acceptable, the principal

and interest repayment schedules will be clearly shown in the note(s). Use of a note with a "payment on demand" feature is not permissible unless it is modified by a supplemental agreement which waives the demand feature and sets forth the repayment schedule.

(2) *Signatures.*—Except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart, the promissory note will be signed as follows:

(i) *Individuals.* Only one person will sign the note as a borrower. If a cosigner is needed, the cosigner will also sign the note.

(ii) *Cooperatives or corporations.* The appropriate officers will execute the note on behalf of the cooperative or corporation. The individuals designated by the cooperative or corporation that will operate the farm will sign the note as cosigner(s) and will be personally liable for the debt.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in the partnership or joint operators in the joint operation, as cosigners.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) Stating that "disposition of the collateral is not authorized hereby."

§ 1980.110 Loan subsidy rates, claims, and payments (for EM actual loss loans only).

Loan subsidies are payments made by FmHA to lenders to induce them to service and collect guaranteed EM loans.

(a) *Subsidy rates.* FmHA will establish subsidy rates periodically. Thus, the subsidy rate may vary from time to time. However, the subsidy rate set forth in the Loan Note Guarantee will remain constant during the life of the loan guarantee. The subsidy rate will be a rate equal to the difference, if any, between the interest rate charged to the borrower and any higher annual rate prevailing in the private market for similar loans as determined by the Secretary of Agriculture. The lender may contact the local County Supervisor servicing the area to obtain the current subsidy rate. (See FmHA Instruction 440.1, Exhibit B, a copy of which is available in any FmHA Office.)

(b) *Annual subsidy claims and payments.* The initial subsidy claim will

be prepared by the lender using Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," on or about a date 12 months from the date of the note. The original will be mailed by the lender to the County Supervisor. Subsequent subsidy claims will be filed by the lender on or about a date 12 months thereafter, but no later than the anniversary date of the filing of the initial subsidy claim. Upon full payment of a note the lender will immediately prepare Form FmHA 1980-24 and mail the original to the County Supervisor.

(c) *When subsidy payments cease.* When FmHA purchases a guaranteed portion of a loan, subsidy payments on that portion will cease. Loan subsidy payments will also cease when the Loan Note Guarantee terminates.

§§ 1980.111-1980.112 [Reserved]

§ 1980.113 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. A preliminary application may be used when an applicant or lender wants FmHA to determine eligibility, feasibility, or the availability of guaranteed authority before filing a complete application. Exhibit C of this subpart (available in any FmHA office) may be used by lenders for submitting applications under this Subpart. The County Supervisor will cooperate with the lender and applicant and will provide appropriate assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Preliminary application.* This will consist of:

(1) Form FmHA 449-6, "Application for Guaranteed Loan (Farmer Programs)." For applications to be processed under the Approved Lender feature set out in Exhibit A of this subpart, Form FmHA 449-6 need only reflect the name, address, telephone number, purpose of the loan or line of credit, and date and signature of the

applicant, provided the information requested on the form is provided on an attached alternative document such as the lender's application form, the FmHA Request for Loan Note Guarantee/Contract of Guarantee, etc.

(2) Verification of off-farm employment, if any.

(3) Commercial credit report or other information concerning an applicant's credit history.

(4) For a cooperative, corporation, partnership, or joint operation, those additional items listed in § 1980.113(b) of this subpart.

(5) Any proposed line of credit agreement.

(b) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation the following additional information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(2) A current personal financial statement from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation.

(3) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(4) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(c) *Preliminary determination by FmHA.* If it appears, after a review of the preliminary application, that the applicant is not eligible, the County Supervisor will notify the loan applicant and the lender in writing within 5 calendar days of FmHA's decision of all the reasons for the decision and advise them of their opportunity for an appeal, as set out in Subpart B of Part 1900 of this chapter, if applicable. If it appears that the applicant is eligible and loan guarantee funding authority is available, the County Supervisor will inform the

lender and applicant not later than 10 calendar days after receipt of the preliminary application and request the lender to submit a complete application.

(d) *Complete application.* The

complete application will consist of:

(1) Those items listed in paragraphs (a) and (b) of this section.

(2) Applicable items required by §§ 1980.40, 1980.41, 1980.42, 1980.43, 1980.44, and 1980.45 of Subpart A of this part.

(3) Form FmHA 449-12, "Request for Loan Note Guarantee (Farmer Program Loans)," or Form FmHA 1980-25, "Request for Guarantee (Operating Loan/Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

(4) A copy of any lease, contract or agreement entered into by the applicant which may be pertinent to the consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

(5) Form FmHA 440-32, "Request for Statement of Debts and Collateral," or similar documentation provided by Approved Lenders.

(6) Notices of compliance with the Privacy Act of 1974.

(7) Proposed loan agreements or line of credit agreements when a Contract of Guarantee is requested, between the applicant and lender. (See paragraph VII of Form FmHA 449-35, "Lender's Agreement," or paragraph VII of Form FmHA 1980-38, "Lender's Agreement.") Loan Agreements or Line of Credit Agreements will include *at least the following*:

(i) Any improved management practices to be implemented.

(ii) Requirements for accounting and recordkeeping and periodic financial reporting. Line of credit agreements will require the borrower to submit annual financial statements and cash flow projections prepared in accordance with paragraph (d)(8) of this section.

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

(iv) Prohibitions against assuming liabilities or obligations of others.

(v) Restrictions on patronage refunds, if the applicant is a cooperative; dividend payments, if the applicant is a corporation; or distribution of net income, if the applicant is a partnership or joint operation.

(vi) Limitations on purchase or sale of equipment and/or fixed assets.

(vii) Limits on compensation of officers and/or owners if not a sole proprietorship.

(viii) Minimum working capital requirements.

(ix) Maximum debt to asset ratio.

(x) Restrictions concerning consolidation, mergers or other circumstances if the applicant is a corporate entity.

(xi) Purposes for which loan funds or funds advanced under the line of credit will be used.

(xii) Interest rate.

(xiii) The plan for repayment, reamortization, or rescheduling of the loan or line of credit.

(8) Production history and operation forecast must also be provided by the lender and/or applicant. Financial and production history must include the past 5 years. The information will also include current financial condition; projected production; income and expenses; and loan/line of credit repayment plan. Forms ordinarily used by the lender or Form FmHA 431-2, "Farm and Home Plan," Form 431-1, "Long-Time Farm and Home Plan," or Form FmHA 424-1, "Development Plan," may be used, or other similar plans of operation acceptable to FmHA.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, documented by date, location, time and degree of use.

(B) Government loan rates, i.e., ASCS target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the State land grant university for the time of crop sale.

(F) For specialty crops, the average of three previous years; prices, *only* if the above data is not available.

(ii) Crop yields will be estimated in the following priority of information available, or in a combination of information if complete information is not available for each category. Estimated crop yields will be based on the applicant's accurate 5-year average, historical production yields. ASCS Proven or Established yields maybe used for actual yields. ASCS Proven or Established yields maybe used for actual yields when the applicant does not have accurate records or has not been established in farming for the past 5 years.

(9) *Appraisals*—(i) *Appraisal Report.*

(A) Real estate or chattel property that will serve as collateral for a loan/line of credit will be appraised. Appraisal reports may be on forms approved by the lender and/or Form FmHA 422-1, "Appraisal Report Farm Tract," and

Form FmHA 440-21, "Appraisal of Chattel Property."

(B) A real estate appraisal report will be based on at least two comparable sales made within 2 years. If the real estate has been appraised by FmHA or by a qualified appraiser within the last 12 months and if no significant changes in the market value of real estate have occurred in the area within the past 12-month period, a new appraisal does not have to be made.

(C) A current chattel appraisal is required when chattels are taken as security.

(ii) *Appraiser Qualifications.* The lender is responsible for substantiating the appraiser's qualifications. The lender will obtain FmHA's concurrence that the appraiser has the necessary qualifications and experience before the lender will utilize the appraiser in any appraisal work. The appraiser completing the report must meet at least one of the following qualifications:

(A) Certification by a National or State appraisal society.

(B) If a certified appraiser is not available, the lender may use other qualified appraisers, if the lender can establish that the appraiser meets the criteria for certification in a National or State appraisal society.

(C) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

(10) The lender's plan for servicing the loan/line of credit and providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.

(11) Notices of compliance with the Privacy Act of 1974.

(12) Applicable items required in Subpart G of Part 1940 of this Chapter, including SCS Form CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," as specified in Exhibit M to Subpart G of Part 1980 of this chapter.

Administrative

A. Regardless of whether the applicant is acting as an individual or as a representative of a cooperative, corporation, partnership, or joint operation, when FmHA solicits personal information, the individual will be given FmHA 410-9, "Statement Required by the Privacy Act."

B. If FmHA desires to obtain information concerning an individual from any source, FmHA will provide such source with Form FmHA 410-10, "Privacy Act Statement to References."

C. Immediately after a preliminary or complete application is received, and prior to

County Committee action, the County Supervisor will send Attachment 1 to Exhibit D of this Subpart to the borrower and lender describing the Interest Rate Buydown Program.

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449-23, "Guaranteed Loan Evaluation (Farmer Programs)." This evaluation is for the benefit of FmHA, not the lender. The County Supervisor will notify participants in the Approved Lender Program within three working days whether an application submitted is complete and acceptable. Nonapproved lenders will be advised on the completeness of applications within 14 working days. This requirement is contingent upon the availability of a County Supervisor during the prescribed time frame, and employment ceilings affecting FmHA.

(a) *Indication of unacceptability.* If the application for a guarantee cannot be approved for reasons that would not be affected by the County Committee certification, the County Supervisor will so inform the lender and the loan applicant in writing within 10 calendar days of the decision. Factual reasons for the decision will be clearly set forth along with notice of the opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

(b) *Indication of acceptability.* If the evaluation indicates that the guarantee may be approved, the County Supervisor will present the application to the County Committee for certification or rejection.

Administrative

The County Supervisor will:

A. Determine if the material and information submitted is complete.

B. Determine that a positive cash flow projection as defined in § 1980.106(b)(17) can be reasonably achieved.

C. Determine if the proposed collateral is adequate, repayment plan realistic, and loan agreement is satisfactory.

D. Determine that the requirements of §§ 1980.40 through 1980.45 of Subpart A of this part and those found in Exhibit M to Subpart G of Part 1940 of this chapter are met.

E. Follow the requirements of Subpart G of Part 1940 of this chapter.

§§ 1980.115 County Committee review.

The County Supervisor will have the County Committee review acceptable loan applications within 30 calendar days (or 14 calendar days, if a participant in the Approved Lender Program is involved) after receipt of completed applications to determine whether the applicants meet FmHA eligibility requirements. The County Supervisor will promptly notify the lender and applicant in writing of the County Committee's determination. (See § 1980.115 Administrative paragraph B.)

(a) *Favorable action.* If the County Committee finds the applicant eligible, the members will sign Form FmHA 440-2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. When the applicant has been determined eligible for assistance and additional information becomes available before issuance of the conditional commitment that indicates the original determination may be in error, the applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440-2. Proper notification as to action taken will be sent to the applicant.

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440-2 and the County Supervisor will inform the lender and the loan applicant in writing within 10 calendar days of FmHA's decision of the reasons for disapproval and of their opportunity for an appeal as set out in Subpart B of Part 1900 of this Chapter.

Administrative

A. After County Committee certification is obtained, the County Supervisor will:

1. Prepare Form FmHA 1940-1, "Request for Obligation of Funds," and, for initial loans/lines of credit only, Form FmHA 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the FMI.

2. Prepare Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." In no case will Form FmHA 449-14 or 1980-15 be executed prior to the determination of availability of funds for the loan/line of credit. Any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices, and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be used if necessary.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. The approval official will:

1. Approve or disapprove all guaranteed applications not later than 60 calendar days after receipt of completed applications, execute Forms FmHA 1940-1, 449-14 and/or 1980-15 and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when funds are temporarily exhausted and the loan will be approved, Form FmHA 1940-1 must be signed. The following approval condition will be included, under Section 41, "Comments and Requirements of Certifying Official," for guaranteed Farmer Program loans.

"This loan guarantee is approved subject to the availability of funds. If this loan guarantee is not issued for any reason within 90 calendar days from the date of approval on this document, the approval official may request updated information concerning the lender and the loan applicant. The undersigned lender agrees that the approval official will have 14 working days to review any updated information and decide whether to submit this document for obligation of funds."

When funds are exhausted, a Conditional Commitment for Guarantee will not be executed until such time as funds have been obligated in connection with the guarantee request.

2. Set forth in the space provided on Form FmHA 449-14 (A.1. above) or Form FmHA 1980-15 (A.1. above) any special conditions of approval, including requirements for security, improved management practices relating to highly erodible land and conversion of wetland found in Exhibit M of Subpart C of Part 1940 of this chapter, and type and frequency of financial reports required by FmHA but not required by the lender. When Form FmHA 1980-15 is executed, the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances to be made for the second and third years of a line of credit. The loan approval official will also include the following requirement as condition of approval in the Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit) if Form FmHA 1980-15 is used) until 60 calendar days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Rate Buydown Program."

An attachment to the form may be used, if necessary. Return Forms FmHA 449-14 or FmHA 1980-15 to the County Supervisor for execution and proper distribution. When Form FmHA 1980-15 is executed the approval official will add the requirement that the lender will submit to FmHA a current

financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances made for the second and third years of a line of credit.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

4. In addition to the requirements in paragraph B.1. above, approval determinations will be made within 14 working days of County Committee Certification for Approval Lenders, and within 30 calendar days of County Committee Certification for nonapproved lenders.

§ 1980.116 Review of requirements.

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449-14 or Form FmHA 1980-15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449-14 or FmHA 1980-15 will be so revised. If rejected, the County Supervisor will notify the loan applicant and the lender in writing within 10 calendar days of FmHA's decision as set out in Subpart A of Part 1910, of all the specific reasons for the decision, and advise them of their opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

See § 1980.60 of Subpart A of this part. The provisions of § 1980.60(a)(2) and (8) are not applicable to Farmer Program loans.

Administrative

The County Supervisor will:

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 449-14 or FmHA 1980-15. A copy of Form FmHA 449-14 or FmHA 1980-15 and any amendments will be included in the file.

B. Review the loan agreement between the borrower and lender which provides for the periodic submission of financial statements to the County Supervisor. *An annual analysis report will be required.* In line of credit cases the County Supervisor will review with the lender the requirement that the lender is to submit a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) for prior approval of advances made in the second and third years of a line of credit.

C. Review plans for inspection on construction projects.

D. Review basic credit requirements of all loans/lines of credit.

E. Review cost overruns, if any, and how they will be met.

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

(a) See § 1980.61 of Subpart A of this part.

(b) A guaranteed portion of the loan may not be sold by the lender until the loan has been fully disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in paragraph III of Form FmHA 1980-38, "Lender's Agreement (Line of Credit)."

(c) The amount to be entered in the blank in paragraph IX. C.5. of Form FmHA 449-35 "Lender's Agreement," or paragraph IX. C.5. of Form FmHA 1980-38 for a loan secured by chattels, will be the lesser of \$10,000 or 20 percent of the loan/line of credit for OL loan/line of credit purposes.

(d) Paragraph IX. C.10. of Form FmHA 449-35 will be changed by striking the word "semiannually," inserting the word "annually" in its place, and eliminating the words "and June 30."

Administrative

A. *Section 1980.61(a).* The original Form FmHA 449-35 or Form FmHA 1980-38 will be kept in the County Office.

B. *Section 1980.61(b)(1).* Copy(ies) of the Loan Note Guarantee(s) or Contract of Guarantee(s) will be kept in the County Office. Additional copy(ies) may be retained by the State Office. Copies of all issued Loan Note Guarantees or Contract of Guarantee(s) will be kept in the file.

C. *Section 1980.61(b)(3).* For reporting purposes where multi-notes are issued, the loan will be counted as one loan regardless of the number of notes issued.

§§ 1980.119-1980.121 [Reserved]

§ 1980.122 Substitution of lenders.

With prior written approval of the FmHA State Director, a new eligible lender may be substituted for the original lender provided the new lender agrees in writing to assume all servicing and other responsibilities of the original lender and acquires the unguaranteed portion of the loan. Such substitution may be made without the holder's consent but not without notice to holder(s) by the substituted lender. The new lender will execute Form FmHA 449-35 or Form FmHA 1980-38 at the same time of the substitution. After approval of the lender, Form FmHA 1980-42, "Notice of Substitution of Lender," will be completed by the

FmHA servicing representative and mailed to the Finance Office.

§ 1980.123 Transfer and assumption of Farmer Program loans.

(a) All transfers and assumptions must be approved in writing by FmHA. Such transfers and assumptions must be to an eligible applicant. EM Actual loss loans may only be transferred to a co-obligor.

(b) The transferee will submit Form FmHA 449-6, and other needed information to the lender for evaluation.

(c) In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual transferee or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding years. Applicants will attest on Form FmHA 449-6 that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) When a transfer and assumption occurs and the transferee has an outstanding insured or guaranteed FO, SW or RL loan, the borrower's total unpaid principal insured and guaranteed indebtedness for these loans may not exceed the lesser of \$300,000 or the market value of the farm or other security. When the transferee is indebted for an OL loan/line of credit, the transferee's total insured and guaranteed OL principal balance may not exceed \$400,000 at the time of the transfer and assumption.

(e) Available transfer and assumption options to eligible applicants include transferring the total indebtedness to another borrower on the same terms, or on different terms not to exceed those terms for which an initial loan/line of credit can be made.

(f) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or the line of credit ceiling for

Contracts of Guarantee. If the transfer is for less than this:

(1) FmHA must determine that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer.

(2) The FmHA County Committee must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the transferor's ability.

(g) Any proceeds received from the sale of security before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption transaction is closed.

(h) The lender is responsible for getting an appraisal of the fair market value of all the collateral securing the loan/line of credit. Subject to the approval of the transferor and transferee, and appraisal can be made by either independent fee appraisers or qualified appraisers on the lender's staff. Appraisers must meet the qualifications outlined in § 1980.113(d)(9)(ii) of this subpart. The appraisal report fee and other related costs will be paid by the transferor and the transferee, as they agree.

(i) The market value of the security being acquired by the transferee, plus any additional security the transferee proposes to give, must be adequate to secure the balance of the total guaranteed loan/line of credit ceiling for Contracts of Guarantee, plus any prior liens.

(j) If any cash downpayment is made, it may be paid directly to the transferor as payment for the transferor's equity in the project provided:

(1) The lender recommends and FmHA approves the cash downpayment be released to the transferor.

(2) Any downpayment that is made by the transferee to the transferor does not suspend the transferee's obligation to continue to make the guaranteed loan/line of credit payments as they come due under the terms of the assumption.

(3) The transferor agrees not to take any actions against the transferee in connection with such transfer in the future without first obtaining the approval of FmHA and the lender.

(4) The lender determines that the transferee has the ability to repay the guaranteed debt assumed and any other indebtedness.

(k) The lender will issue a statement of FmHA that the debt can be properly transferred and the conveyance instruments must be filed, registered, or

recorded, as appropriate, and must be legally sufficient.

(l) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(m) The assumption will be made on the lender's form of assumption agreement.

(n) The assumption agreement must contain the FmHA case number of the transferor and transferee.

(o) The assumption agreement may change loan terms and/or interest rates only if a new Loan Note Guarantee or Contract of Guarantee will be executed.

(p) In the case of a transfer and assumption at the same rates and terms the lender must give any holder(s) notice of the transfer and notice that future payments will be made under a different name and case number. It is the lender's responsibility to see that the transfer and assumption is noted on all originals of the Loan Note Guarantee or Contract of Guarantee. The lender must provide FmHA with a copy of the transfer and assumption agreement.

(q) Before allowing a transfer and assumption at different rates and terms, the lender must consult with any holder(s). If the holder(s) consents in writing to the transfer, the lender must provide FmHA with a copy of the transfer and assumption agreement and must note the transfer and assumption on all originals of the Loan Note Guarantee or Contract of Guarantee.

Administrative

A. Loan approval officials may consent:

1. To all transfer and assumption cases.

2. To the release of the transferor and guarantor(s) from liability on the loan or line of credit agreement. The approval official will notify the lender and the appropriate parties of the decision in writing.

3. To any changes in the loan or line of credit terms and/or interest rates provided the holder(s), if any, and lender agree.

B. The Loan Note Guarantee or Contract of Guarantee will be endorsed in the space provided on the form.

C. A copy of the Assumption Agreement will be retained in the County Office file. The County Supervisor will notify the Finance Office of all approved transfer and assumption cases so that Finance Office records may be adjusted accordingly. This will be accomplished by sending completed Forms FmHA 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan," FmHA 1980-51, "Add, Change, or Delete Guaranteed Loan Record," and, for new borrowers, FmHA 1980-50 to the Finance Office.

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) *General requirements.* All borrowers are expected to repay their loans according to the planned

repayment schedule. However, circumstances may arise which will not permit borrowers to pay as scheduled. When rescheduling, reamortization, or deferral will assist in the orderly collection of a loan, such action may be taken provided:

(1) The borrower meets the eligibility requirements for an initial loan guarantee and the lender's security position would not be adversely affected. For FO, SW loans and OL loans/lines of credit refer to this Subpart for these requirements. For EM loans refer to Subpart D of Part 1945 of this chapter for eligibility and security requirements. For RL loans refer to SW eligibility and security requirements as set out in this Subpart.

(2) The action will ensure that the borrower will be able to continue the farming or ranching operation.

(3) Any delinquency is due to circumstances beyond the borrower's control. Circumstances beyond the borrower's control are limited to one of the following:

(i) A reduction in income has occurred which is not due to inadequate or poor financial management decisions, such as untimely marketing practices.

(ii) Unplanned, but essential, farm expenses and/or, in the case of individual borrowers and the partners, joint operators, stockholders and members who operate the farm, essential family living expenses.

(4) The borrower has acted in good faith by demonstrating sincerity and honesty in meeting agreements with, and promises made to, the lender. This includes cooperating in servicing the account and maintaining the security;

(5) The lender determines that a positive cash flow cannot be developed with the existing repayment schedule, but can be developed with revised repayment terms;

(6) Any holder(s) agrees in writing to the rescheduling, reamortization, and deferral. The holder(s) must understand that they will not receive any payments from the lender or from FmHA during any deferral period.

(7) No interest is ever charged on interest.

(b) *Consolidation and rescheduling.*

(1) The term "consolidate" means to combine the outstanding principal and interest balances of two or more EM loans made for operating loan (Subtitle B) purposes or two or more OL loans.

(2) The term "rescheduling" means to rewrite the rates and/or terms of a single Promissory Note or Line of Credit Agreement which acknowledges indebtedness for a loan made for operating purposes (EM loan or OL loan/line credit).

(3) EM loans made for operating loan purposes may be consolidated only with other EM loans made for operating loan purposes, including EM loans for annual operating purposes and EM major adjustment loans for operating (Subtitle B) purposes. OL Loan Note Guarantee loans may be consolidated only with other OL Loan Note Guarantee loans.

(4) An EM loan made for operating loan purposes or an OL loan/line of credit may be rescheduled when it is in the best interest of the borrower and the lender to do so.

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes and OL loans secured by real estate and OL Contract of Guarantee Lines of Credit will not be consolidated.

(6) There is no limit on the number of times a consolidation or rescheduling action may take place provided all the interest payments are being made.

(7) No new note or line of credit agreement will be taken when a loan/line of credit is rescheduled. Instead, the existing note or line of credit agreement will be modified by attaching on "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change.

(8) The interest rate for a consolidated or rescheduled EM loan for operating purposes will be the current rate established by the Secretary of Agriculture for similar type loans in effect at the time of action. This information is available from any FmHA office (See FmHA Instruction 440.1, Exhibit B).

(9) The interest rate for a consolidated OL loan or rescheduled OL loan/line of credit will be the negotiated rate agreed upon by the lender and the borrower subject to the limitations set out in § 1980.175(e) of this subpart.

(10) A rescheduled note or line of credit agreement or the new note or line of credit agreement which exists after a consolidation occurs must be repaid over a period not to exceed fifteen years from the date of the action, unless the new note evidences a loan made solely for recreation and/or nonfarm enterprise purposes, in which case it must be repaid over a period not to exceed seven years from the date of the action. Balloon payments are prohibited, however, the loan can be rescheduled in unequal amortized installments, provided the current year and any typical year plan(s) demonstrate that these installments can be repaid without further rescheduling. Unequal amortized installments will be used only in those cases where a new enterprise is being

established, developing a farm, purchasing feed while feed crops are being established or during recovery from economic reverses.

(11) When a consolidation occurs, a new Form FmHA 449-34 will be executed.

(12) The new note or line of credit agreement will describe the note(s) or line of credit agreement(s) being consolidated and will state that the indebtedness evidenced by such note(s) or line of credit agreement(s) is not satisfied. The original note(s) or line of credit agreement(s) will be retained for identification purposes.

(c) *Reamortization.* The term "reamortize" means to rearrange the rates and/or terms of a loan(s) made for real estate purposes, i.e., FO, SW, RL, EM actual loss loans having basic security consisting of real estate, and EM major adjustment loans made for real estate (Subtitle A) purposes. Scheduled payments may be rearranged over the remaining term of the original repayment period established for the loan or assumption agreement (new terms), or be rearranged over a period not to exceed the maximum statutory period which is set at 40 years from the date of the original note.

(1) No new note or line of credit agreement will be taken when a loan is reamortized. Instead, the existing note will be modified by attaching an "allonge" or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change.

(2) The interest rate for a reamortized EM actual loss loan will be at the same rate as the original loan.

(3) The interest rate for a reamortized EM major adjustment loan for real estate purposes will be the current market rate in effect for similar type loans at the time of reamortization as established by the Secretary of Agriculture. This information is available from any FmHA office. (See FmHA Instruction 440.1, Exhibit B.)

(4) The interest rate for a reamortized FO or SW loan will be the negotiated rate agreed upon by the lender and the borrower at the time of the action subject to the limitations set out in §§ 1980.180 and 1980.185 of this subpart, as applicable. The interest rate limitation set out in these sections will also apply when RL loans are reamortized.

(d) *Deferral.* The term "defer" means to postpone the payment of interest and/or principal on an FO, SW, RL, OL or EM loan or OL line of credit. Principal may be deferred in whole or in part. Interest may be deferred only in part. A

partial payment of interest will be required during the deferment period.

(1) Deferred interest will not be capitalized.

(2) Payments may be deferred for no more than five years, but in no case will the deferral period extend beyond the final due date of the note.

(3) The lender must determine and FmHA must concur that scheduled payments cannot be made for reasons beyond the borrower's control as defined in paragraphs (a)(3)(i) and (ii) of this section and must also determine that there are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) The rescheduled/reamortized note or line of credit agreement for the new note or line of credit agreement which exists after a consolidation occurs will not increase the amount of principal which the borrower would have been required to pay if the rescheduling, reamortization or consolidation had not been made.

(f) Additional security instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHA.

§ 1980.125 Debt write down.

(a) *General requirements.* In addition to the authorities available in § 1980.124 of this subpart to consolidate, reschedule, reamortize and/or defer a guaranteed loan/line of credit, whether or not that loan/line of agreement is delinquent, and the authority available in Exhibit D concerning an Interest Rate Buydown, a lender may write down a delinquent guaranteed loan/line of credit agreement to the maximum extent possible to avoid losses. Such action may be taken provided:

(1) The borrower cannot demonstrate a positive cash flow projection on all income and expenses, including debt service, after consideration is given to servicing the loan or line of credit agreement using the authorities provided in § 1980.124 of this subpart. If a positive cash flow projection can be achieved using these authorities, then the loan or line of credit agreement will be consolidated, rescheduled, reamortized and/or deferred, and no write down will take place. If a positive cash flow cannot be achieved and an interest rate reduction is contemplated in connection with the write down, the borrower may be considered for an Interest Rate Buydown under Exhibit D of this subpart. If the proposed interest rate reduction results in a positive cash flow, the interest rate reduction and the write down may be approved, providing

the remaining requirements in this paragraph can be met.

(2) The loan or line of credit agreement, if written down, will result in a net recovery to the lender, during the term of the loan or line of credit agreement as written down, that would be more than or equal to the net recovery to the lender from the borrower through bankruptcy or from an involuntary liquidation or foreclosure of the security for the loan or line of credit. The calculations to be used in making this determination are found in paragraph (b) of this section.

(3) The requirements found in § 1980.124 (a)(2) through (a)(5) are met.

(4) After being asked by the lender, other creditors of the borrower agree to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other major creditors of the borrower, other than those that are fully collateralized, agree to participate in developing a restructuring plan or agree to participate in a State's farm medication program, then the write down may be approved, providing the remaining requirements in this paragraph can be met. Failure of such creditors to agree to participate will not preclude use of a write down if the lender, with FmHA's concurrence, determines that a write down results in the least cost to the lender.

(5) If real estate security is involved, the borrower must sign a shared appreciation agreement, as further specified in paragraph (c) of this section, covering the amount written down.

(6) Any holder must agree to the write down in writing. If the holder does not agree to this action, the lender must repurchase the unpaid portion of the loan from the holder before the write down may be approved.

(7) If a line of credit agreement is being written down, no further advances may be made under that agreement and the principal amount remaining after the write down becomes the new line of credit ceiling.

(b) *Value determination.* The lender must determine the recovery value of the security and the value of the written down loan or line of credit agreement in order to determine the net recovery from the involuntary liquidation of the loan or line of credit. These determinations will be done as follows:

(1) The recovery value of the security will be based on the amount of the current appraised value of the security less the estimated costs associated with liquidation and disposition of the loan/line of credit and the security.

(i) The current appraised value will be determined by an independent appraiser selected by the lender and approved by

FmHA, and the appraisal fee will be shared equally by the lender and FmHA.

(ii) The estimated costs associated with liquidation and disposition include the following:

- (A) The payment of prior liens;
- (B) Taxes and assessments, depreciation, management costs, yearly percentage decrease or increase in the value of the property, and lost interest income, each calculated for the lender's average holding period, in the State in which the property is located, for the type of property involved;
- (C) Resale expenses, such as repairs, commissions, and advertising; and
- (D) Other reasonable and necessary administrative costs and expenses, including attorney's fees, that customarily are incurred in such liquidation and disposition.

(2) The value of the written down loan/line of credit agreement will be based on the present value of payments that the borrower would make to the lender if the loan/line of credit terms were modified using any combination of the authorities provided in § 1980.124 of this subpart or an interest rate buydown as provided in Exhibit D of this subpart. The lender will use the rate for 90-day Treasury bills in effect on the date of the writedown to calculate present value. (The National Office will publish the 90-day Treasury bill rate in Exhibit B of FmHA Instructions 440.1, available in any FmHA Office).

(3) If the calculations specified in paragraphs (b)(1) and (2) of this section show that the net recovery to the lender, during the term of the loan or line of credit agreement as written down, would be more than or equal to the net recovery to the lender from the borrower through bankruptcy or from an involuntary liquidation or foreclosure of the security, the loan or line of credit agreement may be written down.

(c) *Shared Appreciation Agreement.* If the loan/line of credit agreement is to be written down in accordance with this section and there is real estate which is security for the loan/line of credit agreement, then the borrower must enter into an agreement that provides for recapture of a portion of any appreciation in the value of the real estate securing the remaining loan/line of credit after write down. This agreement is Exhibit F to this subpart and is entitled "Shared Appreciation Agreement."

(1) The shared appreciation agreement will have a term not to exceed 10 years, and provides for the recapture of appreciation on real estate based on the difference between the appraised value of the real estate at the time the loan/

line of credit agreement is written down and the time of recapture.

(2) The shared appreciation agreement will provide that the amount recaptured will be 75 percent of the appreciated value of the real estate if the events described in paragraph (c)(3) of this section occur within 4 years of the write down, and 50 percent of such value if the recapture occurs during the remainder of the term of the agreement.

(3) Recapture of the appreciated value of the real estate will occur either at the end of the term of the shared appreciation agreement or at the time the real estate is conveyed, the loan/line of credit agreement is repaid, or the borrower ceases farming, whichever occurs earlier. Transfer of title to the borrower's spouse on the borrower's death will not be treated as a conveyance for the purpose of recapture.

(4) Any amount recaptured will be shared on a pro-rata basis between the lender and FmHA as provided in paragraph XIV of Form FmHA 449-35 or paragraph XIV of Form 1980-38.

(d) *Additional Requirements.* (1) The lender will use an addendum to the existing note or line of credit agreement which reflects the writedown of the debt and the existence of any shared appreciation agreement.

(2) If the interest rate is changed, the interest rate will be the negotiated rate agreed upon by the lender and the borrower, subject to the provisions of § 1980.124 (b)(7) and (8) and (c)(3) of this subpart, depending on the type of loan involved.

(3) The lender must attach the original of Exhibit F to the promissory note or line of credit agreement which evidences a loan/line of credit agreement that is written down and to the Loan Note Guarantee or Contract of Guarantee. If a holder is involved, a copy of Exhibit F will be attached to the original Form FmHA 449-36, along with a copy of the note and Loan Note Guarantee. A copy of Exhibit F will be kept in the County Office and attached to the appropriate Loan Note Guarantee or Contract of Guarantee.

(4) As provided by paragraph IX C 2 of Form FmHA 449-35, the lender will remit to the holder the holder's pro-rate share of payments made after the write down.

(5) Additional securing instruments will be required if needed to maintain lien priority or to protect the interests of the lender and FmHA. In addition, if Exhibit F is executed, the lender is responsible for making sure that the security instruments also assure future collection of any appreciation in the property.

(6) The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percentage of the guarantee multiplied by the sum of the outstanding principal and interest balance of the loan/line of credit before the write down less the outstanding balance of the loan/line of credit after the write down. The lender will complete Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to receive its pro-rata share of any loss sustained.

(7) During the period of time in which the shared appreciation agreement is in effect, a note or line of credit agreement which has been written down cannot be consolidated.

§ 1980.126 Mediation.

Various States have mediation programs which are designed to assist farm borrowers and their creditors in resolving financial disputes through the process of mediation. Where a State has such a farm credit mediation program, the lender shall participate in accordance with the rules of that system. The lender must not agree to any proposals concerning the rewriting of the terms of the guaranteed loan which do not comply with the provisions of Subpart A of this part and this subpart, especially §§ 1980.124 and 1980.125. Any agreements reached as a result of such mediation must have prior concurrence by FmHA. FmHA is not bound by any findings of the mediator unless FmHA agrees to such findings.

§§ 1980.127-1980.128 [Reserved]

§ 1980.129 Planning and performing development.

The lender is responsible for seeing that any buildings or other improvements or major land development to be paid for with loan funds are properly completed within a reasonable period of time. The security must be free of any mechanic's, materialmen's or other liens which would affect the priority of the lien which the lender told FmHA would be taken on the security. All major construction, major repairs, and major land development must be performed under contract. As soon as such construction, repair, or land development involving the use of loan funds has been completed in accordance with the plans and specifications, Form FmHA 449-11, "Certificate of Acquisition or Construction," will be completed and given to the County Supervisor. This form will be used by a lender, borrower, and/or contractor to certify that the security has been acquired or the construction completed.

In connection with construction the lender is responsible for:

(a) Making sure there is compliance with applicable laws, ordinances, codes and regulations, including FmHA regulations, which affect all phases of construction. The lender may inspect the site and any construction or development work at any stage whenever the lender considers it necessary.

(b) Seeing that the plans, specifications, and estimates are adequate.

(c) Making sure of the rights to an adequate water supply of sufficient quantity and quality.

(d) Identifying whether the construction or development will be performed by contract or other method.

(e) Checking to see that any necessary bonds covering contractors are in proper form.

(f) Seeing that all equal opportunity and nondiscrimination requirements are met. (See § 1980.41 of Subpart A of this part.)

(g) Limiting periodic or partial payments for construction or development to a reasonable percentage of the actual value of work and material in place. The lender will make final payment only after seeing that the final inspection has been made.

(h) Ascertaining that after planned development is completed, the requirements of § 1980.108(a)(3)(i) of this subpart are met.

Administrative

The County Supervisor will:

A. Check to see that the construction, repair or land development has been completed.

B. Forward Form FmHA 449-11 to the lender for completion and execution by the lender, borrower, and contractor.

§ 1980.130 Loan servicing.

The lender is responsible for loan servicing as required by paragraph IX of Form FmHA 449-35, or paragraph IX of Form FmHA 1980-38.

Administrative

A. The lender has the responsibility for loan servicing and protecting the collateral. Prompt followup on delinquent payments and early recognition of problems are keys to resolving many delinquent loans. Contacts with the borrower will only be made along with the lender.

B. The County Supervisor is responsible for monitoring the lender's servicing activities as follows:

1. Review all of the lender's case files on the borrower within 45 days after loan closing and remind the lender of its servicing responsibilities required in paragraph IX of Form FmHA 449-35 or paragraph IX of Form FmHA 1980-38 when deficiencies are noted.

2. Contact the State Office when the case file review indicates the lender or the borrower has failed to fulfill any of the loan approval conditions and the resulting problem cannot be resolved by the County Supervisor and the lender.

3. Take the action required in paragraph X of Form FmHA 449-35 or paragraph X of Form FmHA 1980-38.

4. Use an office management system for guaranteed loans to assure timely followup on all required financial statements, and to make sure any special requirements for loan servicing conditions are met.

5. Review at least 20 percent of the existing loan(s)/line of credit(s) which each lender has each year and any problem loan(s)/line of credit(s) which were previously identified.

6. Submit to the Finance Office immediately after December 31 of each year, the lender's statement required in paragraph IX C.10. of Form FmHA 1980-38 or paragraph IX C.10. of Form FmHA 449-35 as modified by requirements set out in § 1980.118(d) of this subpart, reflecting the unpaid principal balance on the loan or line of credit.

C. The District Director will:

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

2. Review all field visit reports and make recommendations or comments and transmit them to the State Director, if necessary.

D. County Supervisors are authorized to approve or concur in:

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. Any deferral, rescheduling, reamortization or write-down of the loan.

5. The use of proceeds from the disposition of collateral complying with the provisions of paragraph IX of Form FmHA 449-35 or paragraph IX of Form FmHA 1980-38.

§§ 1980.131-1980.135 [Reserved]

§ 1980.136 Protective advances.

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449-35 or paragraph XII of Form FmHA 1980-38.

Administrative

The County Supervisor is authorized, under paragraph XII of Form FmHA 449-35 or paragraph XII of Form FmHA 1980-38, to approve protective advances in excess of \$500 and will consult with the lender on future servicing of the account. To determine if the loan/line of credit is to be continued with the borrower, the borrower's ability to pay the remaining loan/line of credit balance and any future advances in accordance with the existing repayment schedule will be considered.

§§ 1980.137-1980.138 [Reserved]

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449-34, or paragraph 5 of Form FmHA 1980-27.

Administrative

The County Supervisor will advise the Finance Office by memorandum when a Loan Note Guarantee or Contract of Guarantee is terminated.

§§ 1980.140-1980.144 [Reserved]

§ 1980.145 Defaults by borrower.

(a) See paragraph X of Form FmHA 449-35 or paragraph X of Form FmHA 1980-38.

(b) The lender will arrange with the County Supervisor to meet with the borrower to resolve the problems. At least 3 working days prior to the meeting the County Supervisor will mail Attachment 1 to Exhibit D of this subpart to the lender and the borrower.

(c) A record of the meeting will be prepared, which will at least include a list of the individuals who attend, and a summary of the problem and proposed solutions. The original will be retained in the lender's loan file and a copy will be submitted to the county Supervisor.

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449-35 or paragraph X A of Form FmHA 1980-38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449-35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

B. The County Supervisor will verify the amounts due the holder(s), and transmit the holder's demand for payment by memorandum to the State Director. Copies of evidence of the holder's ownership will be included. Any original evidence of ownership will be retained in the County Office. A proposed payment date will be established in order to calculate the interest due the holder(s).

C. In the event of default or servicing problems, the County Supervisor will use Form FmHA 1980-37, "FmHA Purchase of Guaranteed Loan Portion," to request a check to pay the guaranteed portion of a loan(s) to the holder(s) when necessary. The Finance Office will forward the check within 10 days after receipt of the request.

D. Any evidence of ownership retained in the County Office will be considered in any

future report of loss calculations. A record of any purchase will be maintained in the loan file.

§ 1980.146 Liquidation.

(a) *General.* The general requirements for liquidating a guaranteed Farmer Program loan/line of credit are set out in § 1980.64 of Subpart A of this part and in paragraph XI of Form FmHA 449-35 or paragraph XI of Form FmHA 1980-38. The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. All liquidations must receive prior concurrence by the appropriate FmHA official. Estimated or Final loss claims will be submitted using Form FmHA 449-30, "Loan Note Guarantee Report of Loss," along with the required supporting documentation set out in the instructions for preparing the form.

(b) *Estimated loss payments.* (1) Estimated loss payments will be made after the lender has submitted a liquidation plan that has been approved by the County Supervisor for loss payments up to \$55,000, or the State Director for loss payments in excess of \$55,000. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449-30. The Director, Finance Office, will forward loss payment checks within 30 days of receipt of request.

(2) If the actual loss is less than the estimated loss payment, the lender will reimburse FmHA for the overpayment, plus interest at the note or line of credit agreement rate from the point of initial check issuance. Variable interest notes or line of credit agreements will bear interest at the average note or line of credit agreement rate paid during the loan/line of credit term.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs will be allowed. Reasonable is defined as the prevailing rate charged in the area for like services. Liquidation costs are paid from the sale of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or if liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender are not allowable costs under a liquidation plan. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel and overhead.

(2) *Appraisals.* If an appraisal is made and the fee is shared by FmHA and the

lender in accordance with paragraph XI A 4 of Form FmHA 449-35 or paragraph XI A 4 of Form FmHA 1980-38, this is an allowable liquidation cost. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered. The funds that are collected as recovery of an appraisal fee will be forwarded to the Finance Office along with Form FmHA 1980-40, "Reverse a Report of Liquidation Expense."

Administrative

A. *Appendix A.* The County Supervisor will refer to Appendix A of this subpart (available in any FmHA office) for advice on how to interact with the lender on liquidations and property management.

B. *Meetings.* The County Supervisor will meet with the lender when the lender or FmHA determines that liquidation is necessary and will inform the District Director and the State Director of the results.

C. *Form FmHA 449-35, paragraph XI B or paragraph XI B of Form FmHA 1980-38.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see Subpart A of Part 1955, Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter). The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, submit Form FmHA 1980-45, "Notice of Liquidation Responsibility," to the Finance Office.

D. *Form FmHA 449-35, paragraph XI D or paragraph XI D of Form FmHA 1980-38.* County Supervisors are responsible for seeing that the lender complies with the requirements of paragraph XI D. The County Supervisor will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office, when necessary. When FmHA liquidates the security, the County Supervisor will submit these reports to the lender and will send copies to the District Director and the State Office.

E. *Form FmHA 449-35, paragraph XI E 2 or paragraph XI E 2 of Form FmHA 1980-38.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449-30 in

those cases where the loss payment will not exceed \$55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

F. *Form FmHA 449-35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980-38.* Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced, if necessary, after considering the Conditions of Guarantee in Form FmHA 449-34 or Form FmHA 1980-27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss payment does not exceed \$55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any review. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for appeal as set out in Subpart B of Part 1900 of this chapter.

§ 1980.147 Graduation.

There is no graduation requirement for guaranteed loans/lines of credit.

§ 1980.148 Appeal procedure.

Refer to Subpart B of Part 1900 of this chapter for the method of appealing adverse decisions of County Committees, County Supervisors, District Directors and State Director.

§ 1980.149 Access to lender's records.

See § 1980.81 of Subpart A of this part for this requirement.

§§ 1980.150-1980.152 [Reserved]

§ 1980.153 FmHA forms.

See § 1980.83 of Subpart A of this part and Exhibit C (available in any FmHA office) of this subpart.

Administrative

A. *Office of the General Counsel (OGC):* In performing administrative functions with respect to Farmer Program loans, FmHA may ask for the advice and assistance of OGC on any legal matter. However, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are met. If FmHA has any

questions concerning the lender's resolution of these matters, it should consult with OGC.

B. *Delegation of Authority:* State Directors should delegate to their staff members those administrative duties and responsibilities stipulated in the Administrative sections of this subpart.

§§ 1980.154-1980.174 [Reserved]

§ 1980.175 Operating loans.

(a) *Objectives.* The basic objective of the guaranteed OL loan program is to provide credit for family farmers and ranchers to conduct operations when credit is not available without a guarantee. This assistance provides family farm operators an opportunity to make efficient use of their land, labor and other resources, to improve their living conditions and to improve their overall economic situation.

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C to Subpart A of Part 1941 of this Chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449-6 that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization

Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(v) Honestly try to carry out the conditions and terms of the loan.

(vi) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vii) Be an owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its members, stockholders, partners, or joint operators, as individuals.

(ii) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(iii) Consist of members, stockholders, partners or joint operators who are individuals and not a cooperative(s), corporation(s), partnership(s), or joint operation(s).

(iv) If the members, stockholders, partners, or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite

parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request INS to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(B) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(D) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(E) At least one member, stockholder, partner or joint operator must operate the family farm.

(F) The entity must operate the farm and be authorized to own or operate a farm in the State(s) in which the farm is located.

(v) If the members, stockholders, partners or joint operators holding a majority interest are *not* related by marriage or blood:

(A) The requirement of paragraphs (b)(2)(iv) (A) through (D) must be met.

(B) They and the entity itself must operate the family farm.

(C) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (1) All of the members of the entity are related by blood or marriage, (2) all of the members are or will be operators of the entity, and (3) the majority interest holders of the entity meet the requirements of paragraphs (b)(2)(iv) (A) through (D) and (F) of this section.

(c) *Loan purposes.*—(1) *Loan Note Guarantee.* Loans may be made for farm, forestry, recreation and nonfarm enterprises for the following purposes,

when such purposes are essential to the operation:

(i) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, worms, birds, bees, tools, and inventories, or to purchase an individual undivided interest in such items.

(ii) Payment of annual operating expenses.

(iii) Payment of family living expenses.

(iv) Refinancing debt incurred for any authorized operating loan purpose, including FmHA insured loans.

(v) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(vi) Purchase and repair of essential home equipment.

(vii) Purchase of milk base or milk quota with or without cows.

(viii) Not more than \$7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made by the lender before a guaranteed OL loan is made for real estate improvement:

(A) Loans will not be needed year after year for this purpose.

(B) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(ix) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(x) Purchase of a franchise, contract or privilege when necessary to the operation of the planned enterprise.

(xi) Partial payment for the purchase and construction of crop, storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(2) *Contract of Guarantee—Line of Credit.* Lines of credit may be advanced for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Payment of annual operating expenses, which may include the purchase of feeder animals, and family living expenses.

(ii) Payment of debts incurred by the borrower for current annual operating expenses that were advanced by the lender and/or other creditors/suppliers prior to the issuance of the guarantee. In no case will carryover debts from previous crop years be refinanced.

(d) *Loan limitations.* (1) The total outstanding insured and guaranteed OL principal balance owed by the loan applicant or owed by anyone who will sign the note as a cosigner may not exceed \$400,000 at loan closing. The amount of principal outstanding at any one time on a guaranteed line of credit must never exceed the ceiling set out on the Contract of Guarantee.

(2) Loans may not be made for:

(i) The purchase of real estate, or
(ii) Making principal payments on real estate.

(3) Guaranteed lines of credit will not be used for capital expenditures.

(4) Loans also may not be made for any purpose that will contribute to excessive erosion or highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(5) More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan/line of credit is secured with separate collateral that is clearly identified. This requirement does not preclude cross-collateralization of loans/lines of credit with other guaranteed loans/lines of credit to obtain additional collateral provided that the loans/lines of credit are held by the same lender. Total loans or line of credit ceilings must not exceed \$400,000 at any time.

(e) *Interest rates.* The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender will charge the same rate on both the guaranteed and the non-guaranteed portions of the note.

(2) The lender may charge a rate not to exceed the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally

charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(3) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a rate specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument.

(4) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the OL loan/line of credit when processing an Interest Rate Buydown under Exhibit D of this Subpart. The reduced rate of interest must be fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new note(s) or line of credit agreement(s) may be issued. If the amendment is attached to a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(5) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) *Terms.* (1) The final maturity date for each loan/line of credit cannot exceed 7 years from the date of the promissory note/line of credit agreement.

(2) All advances on a line of credit must be made within 3 years from the date of the Contract of Guarantee.

(3) Ordinarily, loan funds used to pay annual operating expenses or bills

incurred for such purposes for the crop year being financed will be scheduled for payment when the income from the year's operation is to be received. Under certain circumstances these payments may be scheduled over longer periods. Circumstances which warrant an extended repayment schedule are factors such as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established or during recovery from disaster or economic reverses. Crops only are not sufficient security when repayment is scheduled over the longer period.

(4) Advances for purposes other than those for annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of seven years.

(5) When conditions warrant, installments scheduled in accordance with paragraph (f)(4) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments there must be adequate collateral for the loan/line of credit at the time the balloon installment becomes due. In no case will annual crops and/or machinery be used as the sole collateral securing a loan with a balloon installment. Circumstances which warrant balloon payments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from economic reverses. The amount ballooned should not exceed that which the borrower could reasonably expect to pay during a maximum additional 15-year period except for NFE loans, which will be a maximum additional 7 years. The applicant must be advised before the loan is closed that the lender will review each case at the end of the initial loan term to determine if such rescheduling is warranted. (See § 1980.124 of this subpart.)

(g) *Security.* Ordinarily, the security must be adequate in the opinion of the lender and FmHA to assure repayment of the loan/line of credit. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the lender and FmHA (provided the FmHA approval official's opinion is based on the evaluation set forth in § 1980.114 of this subpart) in determining whether the loan/line of credit should be made. However, when a loan is made for refinancing purposes, the amount refinanced may not exceed the value of the security. The loan/line of credit must be secured by a first lien

on all property or products acquired or produced with loan funds and by any additional security needed. Any loans made for refinancing when the debt refinanced is secured by real estate or chattels will be secured by a first lien on the property securing the debt which is being refinanced or when the debt refinanced is secured by a junior lien on real estate which is no lower than the lien presently held on the property securing the debt being refinanced, and by any additional security needed. Additional security may consist of the best lien obtainable on chattels, real estate or other property.

(h) *Special security requirements.* When guaranteed OL loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed OL loan(s) as individual(s) or when guaranteed OL loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed OL loan(s), security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and identifiable collateral.

(i) *Insurance.* Insurance for property, public liability, and crops should be obtained before or at the time of loan closing.

(1) *Chattel property.* Borrowers should be encouraged to carry insurance on chattel property, including growing crops, which serves as security for a loan and on other chattel or real property, in order to protect themselves against losses resulting from hazards existing in an area. It is especially desirable that insurance be obtained by applicants who receive large loans and have considerable chattel property including feed, supplies, and inventory centrally stored over an extended period. Such insurance may be required by the loan approval official in individual cases.

(2) *Real estate.* If essential insurable buildings are located on the property, or improvements are to be made to existing buildings, the applicant, when required, will provide adequate property insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Real property insurance will not be required when a real estate appraisal report shows that both the present market value of the land (after deducting the value of buildings) and the owner's equity in the land exceed the

amount of the debt, including the debts for the loan being made. However, the applicant will be encouraged to carry insurance. If insurance claims for loss or damage to buildings to be replaced or repaired with the loan funds are outstanding at the time the guarantee is approved, the applicant will be required to agree in writing that when settlement of these is made, the proceeds will be used to replace or repair buildings, to apply to debts secured by prior liens, or to apply to the guaranteed OL loan/line of credit being made.

(3) *Public liability and property damage.* Borrowers, receiving loans for farm, recreational, or nonfarm enterprises should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(j) *Other considerations.*

(1) Applicants will be advised by the lender that they are expected to comply with any applicable special laws and regulations.

(2) Applicants receiving loans for nonfarm enterprises will be advised of the possibility of incurring liability and encouraged to obtain public liability and property damage insurance.

§§ 1980.176-1980.179 [Reserved]

§ 1980.180 Farm Ownership loans.

(a) *Objectives.* The basic objectives of the guaranteed FO loan program are to assist eligible applicants who cannot get credit without a guarantee to become owner-operators of family farms. The operations may include establishment or enlargement of nonfarm enterprises to supplement the farm income.

(b) *Farm ownership loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449-6 that as individuals or that its members, if an entity, have not been

convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (See § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the INS to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district. (See Exhibit B of Subpart A of Part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iv) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(v) Honestly try to carry out the conditions and terms of the loan.

(vi) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vii) Be the owner-operator of not larger than a family farm after the loan is closed.

(2) A cooperative, corporation, partnership, or joint operation must:

(i) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and all of its

members, stockholders, partners, or joint operators, as individuals.

(ii) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made.

(iii) Consist of members, stockholders, partners or joint operators who are individuals and not a cooperative(s), corporation(s), partnership(s), or joint operation(s).

(iv) If the members, stockholders, partners or joint operators holding a majority interest are related by marriage or blood:

(A) They must be citizens of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown in the alien's identification document is questioned, the County Supervisor may request INS to verify the information appearing on the alien's identification card by completing INS Form G-641, Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by mail to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(B) They must have sufficient applicable training or farming experience in managing and operating a farm or ranch (within 1 of the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(C) They and the entity itself must have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(D) They and the entity itself will honestly try to carry out the conditions and terms of the loan.

(E) At least one member, stockholder, partner or joint operator must operate the family farm.

(F) The entity must own and operate the farm and be authorized to do so in the State(s) in which the farm is located.

(v) If the members, stockholders, partners or joint operators holding a majority interest are *not* related by marriage or blood:

(A) The requirements of paragraphs (b)(2)(iv) (A) through (D) and (F) must be met.

(B) They and the entity itself must own and operate the family farm.

(vi) If each member's, partner's, stockholder's or joint operator's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if: (1) All of the members of the entity are related by blood or marriage, (2) all of the members are or will be operators of the entity, and (3) the majority interest holders of the entity meet the requirements of paragraphs (b)(2)(iv) (A) through (D) and (F) of this section.

(c) *Loan purposes.* Loans that are consistent with all Federal, State and local environmental quality standards may be made for the following authorized loan purposes:

(1) Purchase or enlarge a farm, including any land for recreation or other nonfarm enterprise. This may include:

(i) Purchasing easements and rights-of-way needed to operate the farm or nonfarm enterprise.

(ii) An applicant's portion of the cost of land which is being subdivided.

(iii) Making a downpayment on the purchase of land under the following conditions:

(A) A deed is obtained by the applicant and the unpaid balance on the loan is secured by a note and mortgage or an acceptable land purchase contract or similar instrument.

(B) The applicant can meet the loan terms under normal farm conditions.

(C) The conditions and the requirements of any prior mortgage or contract meet the security requirements for taking a junior lien as shown in paragraph (f)(2)(iii) of this section.

(D) A purchase contract is signed which obligates the purchaser or contract to meet the security requirements for the rights of present possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specific part of the purchase price.

(2) Construct, buy, or improve buildings and facilities needed on the applicant's farm, including:

(i) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf

driving ranges, campsites, and modest rental housing. For dwelling improvement or construction, consideration may be given to additional space required for facilities used for food preparation and storage, vehicle storage, or laundry and office space, the size and cost of which will not exceed that owned by typical family farmers in the area.

(ii) The improvement, alteration, repair, replacement, relocation or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(3) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes; improving orchards; and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of hiring someone to do the development work. Also, loan funds may be used to pay that part of the cost of facilities, improvements and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed \$1,000, the applicant will assign the payment to the lender.

(i) Funds may be used to pay for development costs on land owned with defective title (see paragraph (f)(2) of this section) or on land in which the applicant owns an undivided interest, provided:

(A) The amount of loan funds used on such land is limited to \$25,000;

(B) There is adequate security for the loan; and

(C) The tract with defective title or undivided interest is not included in the appraisal report.

(ii) Funds may be used to pay for development costs on land leased by the applicant provided:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life;

(B) A written lease provides for payment to the tenant or assignee of any unexhausted value of the improvement if the lease is terminated;

(C) There is adequate security for the loan; and

(D) The amount of loan funds used for improvements on leased land will not exceed \$10,000.

(4) Refinance debts subject to the following:

(i) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(ii) The lender will verify the need to refinance all secured debts and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Pay reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, architectural and other technical services, first year insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrowers and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development.

(6) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned or purchased acreage for such enterprise is not physically located on the farmland.

(7) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan limitations.* A guaranteed FO loan will not be approved if:

(1) The total outstanding insured or guaranteed FO, Soil and Water (SW) or Recreation (RL) loans principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of \$300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between

tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or high erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(e) *Rates and terms.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(2) *Interest rates.* (i) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender will charge the same rate on both the guaranteed and the non-guaranteed portions of the note.

(ii) The lender may charge a rate *not to exceed* the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(iii) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a rate specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change

must be set forth in the loan/line of credit instrument.

(iv) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the FO loan when processing an Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or other legally effective amendment of the interest rate; however, no new note(s) may be issued. If the amendment is attached to a variable rate note, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(v) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(3) Installments on loans may be deferred in accordance with § 1980.124 (d) of this subpart.

(f) *Security.* (1) Each guaranteed FO loan will be secured by real estate or by a combination of real estate and chattels or other security.

(2) When obtaining real estate security the following will apply:

(i) A mortgage will be taken on the entire farm owned or to be owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cleared at a reasonable cost provided:

(1) The lender determines the applicant's interest is of such nature that it is not mortgagable;

(2) To include the land would complicate loan servicing or liquidation; and

(3) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(4) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property, where purchase money or improvements are not involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit

a lien provided the part excluded from the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security for the loan.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. The exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattel subject to the following conditions:

(i) There is not enough real estate security for the loan and the best lien obtainable on the farm has been taken.

(ii) Taking a lien on chattels will not prevent the borrowers from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm and usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any such property must have security value and be transferable.

(5) For the State of Hawaii—FO loans on leasehold interests on real property. The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simply by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an approved appraiser of the lender. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA Hawaii State Office will issue an amendment to its State supplement for this Subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, must have prior National Office approval before being issued.

(g) *Special requirements.* (1) The lender is responsible for making a preliminary determination as to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm; roads, schools, markets, or other community facilities; tax rates and adequacy of the water supply. A decision also will be made on the suitability of the farm for a nonfarm enterprise facility or specialized farm

operation, and development needed to make it a suitable farm.

(2) Buildings adequate for the planned operation of the farm, including any nonfarm enterprise, must be available for the applicant's use after the loan is made. The necessary buildings ordinarily will be located on the applicant's farm. Exceptions to this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully. A real estate lien will be taken on such dwelling.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home. A mobile home will not be considered to add value to the farm but FO guaranteed loan funds may be used to finance anchoring the home.

(3) Development needed to make the farm and nonfarm enterprise ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. The applicant should obtain the recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups to be included in the development plan and in the operating plan. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any sources such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(4) Insurance on buildings and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Applicants receiving loans for nonfarm enterprises will be advised by the lender of the possibility of incurring liability and will be encouraged to obtain public liability and property damage insurance. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary for the lender to determine that:

(i) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(ii) Any off-farm employment the applicant depends on is likely to continue.

(6) Nonfarm enterprises will be analyzed by the lender to determine soundness.

(7) Other assets not used directly in the farming operation will be handled as follows:

(i) A guaranteed FO loan may be made when essential real estate is owned, either in whole or as an undivided interest, that will not be part of the farm provided:

(A) The real estate furnishes employment or income which is essential to the applicant's success.

(B) Sale of the property will not eliminate the need for FmHA guaranteed credit.

(C) Retention of the real estate will not cause the operation to be larger than a family farm.

(ii) An applicant will dispose of nonessential real estate or an undivided interest in real estate no later than loan closing. If this is not feasible, the applicant must agree in writing to dispose of the property as soon after closing as possible. Under no circumstances may the property be held for more than three years after closing.

(iii) The applicant must agree to use the proceeds from the sale of other real estate to:

(A) Pay costs and taxes connected with the sale;

(B) Reduce the FmHA guaranteed debt or any prior lien;

(C) Make essential capital purchases; or

(D) Pay essential farm and home expenses.

(iv) Real estate or an interest in real estate which is retained after loan closing, but which is not part of the farm will not be included in:

(A) The appraisal report.

(B) The security instrument for the loan.

(C) The total debt against the security.

(8) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(9) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the guaranteed loan such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts against the farm, unless the total debt against the security would be within its market value.

(10) *Special security requirements.* When guaranteed FO loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed FO loan(s) as individual(s) or when guaranteed FO loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for a guaranteed FO loan(s), security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and identifiable collateral.

§§ 1980.181-1980.184 [Reserved]

§ 1980.185 Soil and Water loans.

(a) *Objectives.* The basic objectives of the guaranteed SW loan program are to encourage and facilitate the improvement, protection, and proper use of farmland by providing financing for soil conservation; water development, conservation, and use; forestation; drainage of farmland; the establishment and improvement of permanent pasture; pollution abatement and control; and other related measures consistent with all Federal, State, and local environmental quality standards. Achieving these objectives should help farmers to make needed land-use

adjustments and should lessen the impact of adverse weather conditions on farming operations.

(b) *Soil and Water loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR Part 1308, which is Exhibit C of Subpart A of Part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 449-6 that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(1) An individual must:

(i) Be a citizen of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States") or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the INS to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(ii) Possess the legal capacity to incur the obligations of the loan.

(iii) Have the character (emphasizing credit history, past record of debt payment and reliability), and industry to carry out the proposed operation.

(iv) Honestly try to carry out the conditions and terms of the loan.

(v) Be unable to obtain sufficient credit without a guarantee to finance actual needs at reasonable rates and

terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(vi) Be the owner or operator of a farm after the loan is closed.

(vii) If a tenant, have a satisfactory written lease for a sufficient period of time and under the terms that will enable the operator to obtain reasonable returns of the improvements to be made with the guaranteed loan. In addition, the lease or separate agreement should provide for compensating the tenant for any unexhausted value of the improvements upon termination of the lease.

(2) A cooperative, corporation, partnership or joint operation must:

(i) Along with all of its members, stockholders, partners, or joint operators have the character (emphasizing credit history, past record of debt repayment and reliability), and industry to carry out the proposed operation.

(ii) Along with all of its members, stockholders, partners, or joint operators, honestly try to carry out the conditions and terms of the loan.

(iii) Consist of members, stockholders, partners or joint operators holding a majority interest who are citizens of the United States (see § 1980.106(b)(21) of this subpart for the definition of "United States"), or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide INS Forms I-151 or I-551, "Alien Registration Receipt Card." Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the INS to verify the information appearing on the alien's identification card by completing INS Form G-641, "Application for Verification of Information from Immigration and Naturalization Records," obtainable from the nearest INS district (see Exhibit B of Subpart A of Part 1944 of this chapter). Mail the completed form to INS. The payment of a service fee by FmHA to INS is waived by inserting in the upper right hand corner of INS Form G-641, the following: "INTERAGENCY LAW ENFORCEMENT REQUEST."

(iv) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(v) Be unable to obtain sufficient credit without a guarantee, either as an entity or as individual members, stockholders, partners, or joint operators to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates

and terms in or near the community for loans for similar purposes and periods of time.

(vi) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(vii) Be the owner or operator of a farm after the loan is made.

(viii) If a tenant, have a satisfactory written lease for a sufficient period of time and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any exhausted value of the improvements upon termination of the lease.

(ix) Consist of members, stockholders, partners or joint operators who are individuals and not corporations(s), partnership(s), cooperative(s), or joint operations.

(c) *Loan purposes.* Loan purposes must be consistent with all Federal, State and local environmental quality standards and funds may be used to:

(1) Pay the costs for construction, materials, supplies, equipment, and services related to land and water development, use, conservation; and energy saving measures related to soil and water conservation, such as:

(i) Terraces, dikes, reservoirs, ponds, tanks, cisterns, liquid and solid waste disposal facilities, wells, pipelines, pumping and irrigation equipment, ditches and canals for drainage, waterways, and erosion control structures.

(ii) Drainage of land which is part of an operating farm unit.

(iii) Land clearing.

(iv) Sodding, subsoiling, land leveling, liming and fencing.

(v) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(vi) Forestation for sustained yield and tree planting for erosion control or shelter belt purposes.

(vii) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(viii) Reasonable expenses incidental to obtaining, planning, closing and making the loan, such as fees for legal, engineering or other technical services, hazard insurance premiums, and loan fees authorized in § 1980.22 of Subpart A of this part, which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor

hired by the borrower in connection with making any planned improvements.

(ix) Purchase or repair of special-purpose equipment such as terracing, land leveling and ditching equipment, provided:

(A) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(B) The cost of the equipment plus the other cost related to improvement will not be more than if performed by a contractor or by another method.

(2) Pay the costs of meeting Federal, State or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures if necessary to comply with such pollution abatement requirements.

(3) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(i) The purchase of water stock or membership in an incorporated water user association.

(ii) The acquisition of a water right through appropriation, agreement, permit, or decree.

(iii) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(A) The value of the land without the water supply or right is only an incidental part of the total price; and

(B) The water supply and right will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(4) Refinance debts subject to the following:

(i) The debts were incurred for authorized guaranteed SW loan purposes.

(ii) All development or repair work conforms to FmHA standards or those standards will be met with the guaranteed loan.

(iii) The applicant's present creditors will not furnish credit at rates and terms the applicant can meet.

(iv) The lender will verify the need to refinance all secured and major unsecured debts. The unpaid balance on the debts to be refinanced will also be verified.

(5) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(6) Pay that part of the costs of facilities, improvements, and "practices" which will be paid for in connection

with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service (ASCS) or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed \$1,000, the applicant will assign the payment to the lender.

(7) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(8) Pay costs of land and water development, use, and conservations essential to the applicant's farm, subject to the following:

(i) Such a loan may be made on land with defective title owned by the applicant (see paragraph (f) of this section) or on land in which the applicant owns an undivided interest providing:

(A) The amount of funds used on such land is limited to \$25,000;

(B) There is adequate security for the loan, and

(C) The tract is not included in the appraisal report.

(ii) Such a loan may be made on land leased by the applicant providing:

(A) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life.

(B) A written lease provides for payment to the tenant or assignee any unexhausted value of the improvement if the lease is terminated.

(C) There is adequate security for the loan.

(9) Purchase any stock in a cooperative lending agency that is necessary to obtain the loan.

(d) *Loan Limitations.* A guaranteed SW loan will not be approved if:

(1) The total outstanding insured or guaranteed SW, FO or RL loan principal balance owed by the applicant or owed by anyone who will sign the note as a cosigner will exceed the lesser of \$300,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The loan purpose will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as

further explained in Exhibit M to Subpart G of Part 1940 of this chapter. A decision by FmHA to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(e) *Rates and terms.* (1) Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(2) Interest rates. (i) The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender will charge the same rate on both the guaranteed and the non-guaranteed portions of the note.

(ii) The lender may charge a rate not to exceed the rate the lender charges its average farm customer. Average farm customers are those conventional borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan.

This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as saving accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(iii) Except for Farm Credit System member institutions, if a variable rate is used, it must be tied to a rate specifically agreed to by the lender and borrower. The interest rate on loans made by a Farm Credit System member institution will be a fixed or variable rate based on their administrative and borrowing costs. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument.

(iv) The lender, borrower and holder (if any) may collectively effect a temporary reduction in the interest rate of the SW loan when processing an

Interest Rate Buydown under Exhibit D of this subpart. The reduced rate of interest must be a fixed rate for the term of the buydown. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or other legally effective amendment of the interest rate; however, no new note(s) may be issued. If the amendment is attached to a variable rate note, the fixed rate of interest charged during the buydown period will be calculated not to exceed the average variable rate charged the lender's average farm customer over the past 90 days.

(v) Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(3) Installments may be deferred in accordance with § 1980.124 (d) of this subpart.

(f) *Security.* (1) Each guaranteed SW loan will be secured by real estate, chattels, other security, leaseholds or a combination of these.

(2) When obtaining real estate security, the following will apply:

(i) A mortgage will be taken on the entire farm to be improved which is owned by the applicant, including land in which the applicant owns an undivided interest, except a portion of the farm will be excluded when:

(A) The applicant's title to that part of the farm is defective, and cannot be cured at a reasonable cost, provided:

(1) The lender determines the applicant's interest is of such nature that it is not mortgageable; and

(2) To include the land would complicate loan servicing or liquidation; and

(3) Any land on which title is defective will not be included in the appraisal of the farm whether or not it is described on the mortgage.

(4) State law prohibits taking a lien on homestead property, except for the purchase money of that property and financing improvements and the State Director has issued a State supplement exempting taking a lien on homestead property where purchase money or improvements are not involved.

(B) The present lienholder on that part of the farm will not permit a junior lien or State law will not recognize or permit a lien provided the part excluded from the security is not included in the appraisal report.

(C) Soundness of the loan will not be affected if there is defective title or part of the farm is not included as security.

(ii) When the farm alone will not provide enough security, other real estate owned by the applicant may also be taken as security.

(iii) Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's or the lender's interest or the applicant's ability to pay the guaranteed loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to the lender whenever State law or other arrangements do not require such a notice.

(iv) Any loan of \$10,000 or less may be secured by the best lien obtainable without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(3) Loans may be secured by chattels subject to the following conditions:

(i) Real estate security is inadequate to secure the loan or is not available at all.

(ii) Taking a lien on chattels will not prevent the borrower from obtaining operating credit from other sources or the FmHA.

(iii) Junior liens on chattels may be taken when there is enough equity in the property. However, when practical, a first lien on selected chattel items should be obtained.

(iv) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and this additional security is needed to secure the loan.

(v) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan. No other security need be required if the stock represents the right to receive water and is transferable separately from the land, provided:

(A) There is a market for the stock.

(B) The purchase price is no greater than the price at which stock in the water company is normally sold.

(vi) If secured by chattels only, the loan cannot be over \$100,000 and must be scheduled for repayment within 20

years or the useful life of the security, whichever is less.

(vii) The lender is responsible for obtaining the lien on chattel security and keeping it effective as notice to third parties.

(4) Other items or property may be taken as additional security when needed. These include:

(i) Items such as land, buildings, fixtures, fences, water, water stock and facilities, other improvements, easements, rights-of-way, and other appurtenances that are considered part of the farm usually pass with the farm in a change of ownership. If any of these do not pass with a change of ownership, the lender will properly identify such items and include them in an appropriate security instrument or assignment.

(ii) Other property that cannot be converted to cash without jeopardizing the borrower's farm operation such as the cash value of insurance policies, stock, memberships or stock in associations or water stocks. Any such property must have security value and be transferable.

(5) A loan may be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(i) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure that the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(ii) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the lender's security. Any provisions which may jeopardize the lender's security must be limited, modified, waived or subordinated in favor of the lender.

(iii) With respect to achieving the purpose of the loan, obtaining adequate security, and being able to service the loan and enforce its rights, the lender, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the

mortgage on the leasehold interest, the lender should consider whether or not:

(A) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(B) The right to foreclose the mortgage and sell without restriction would adversely affect the saleability or market value of the security.

(C) The lender has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(D) The lender has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit.

(E) The borrower has the right, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the mortgage, to an eligible transferee who will assume the guaranteed SW debt.

(F) Advance notice will be given to the lender of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit the lender to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, permit appropriate action by the lender to be taken.

(G) There are express provisions covering the question of the lender's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during the lender's occupancy or ownership, pending further servicing or liquidation.

(H) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(I) Any other provisions are necessary to obtain an interest which can be mortgaged.

(iv) The following language or similar language which is legally adequate will be inserted on the lien instrument:

"All Borrower's right, title, and interest in and to the leasehold estate for a term of — years beginning on —, 19—, created and established by a certain Lease dated —, 19—, executed by — as lessor(s), recorded on —, 19—, in Book —, page —, of the — Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and

interest in and to said Lease, covering the following real estate:" (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

"Borrower will pay when due all rents and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the lender's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect."

(g) *Special requirements.* (1) When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan and in the operating plans. In planning such development with the applicant, the lender will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(2) Applicants are responsible for obtaining all the technical assistance required in connection with a guaranteed SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(3) Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(i) The land to be irrigated is suitable for irrigation.

(ii) The applicant has a right to use water for irrigation.

(iii) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(iv) If irrigation specialists have prepared any feasibility studies, copies of these studies should be submitted to the lender.

(4) Insurance on building and other property, and insurance available in flood and mudslide hazard areas, will be obtained as required by the lender. Chattel security should be insured against losses caused by hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the lender and the Government.

(5) When life estates are involved, loans may be made:

(i) To both the life estate holder and the remainderman, provided:

(A) Both have a legal right to occupy and operate the farm; and

(B) Both are eligible for the loan; and

(C) Both parties sign the note and mortgage.

(ii) To the remainderman only, provided:

(A) The remainderman has a legal right to occupy and operate the farm; and

(B) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(iii) To the life estate holder only, provided:

(A) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(B) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(6) A loan will not be approved if a lien junior to the lender's lien securing the guaranteed loan is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the guaranteed loan, unless the total debt against the security would be within its market value.

(7) *Special security requirements.* When guaranteed SW loans are made to eligible *entities* that consist of members, stockholders, partners or joint operators who are presently indebted for a guaranteed SW loan(s) are made to eligible *individual(s)*, or when guaranteed SW loans are made to eligible *individuals*, who are members, stockholders, partners or joint operators of an entity which is presently indebted for guaranteed SW loan(s), security must consist of chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA for any other farmer program insured or guaranteed loans. Different lien positions on real estate are considered separate and identifiable collateral.

§§ 1980.186-1980.199 [Reserved]

§ 1980.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0079.

13. Exhibit A to Subpart B and Attachments 1 and 2 are revised in their entirety and read as follows:

Exhibit A—Approved Lender Program—Farm Ownership and Operating Loans

I. General

This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175 and Farm Ownership (FO) Loans described in § 1980.180 of this subpart. The objectives are to minimize time required by approved lenders in obtaining response to request for a guarantee, eliminate the requirement of having Form FmHA 449-35, "Lender's Agreement," or Form FmHA 1980-38, "Lender's Agreement (Line of Credit)," executed for each loan or line of credit guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1 and 2, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Exhibit. Attachment 1 is the Lender's Agreement to be executed in relation to regular term loans. Attachment 2 is the Lender's Agreement that is to be executed in relation to lines of credit. The lender, in its application, should indicate the type(s) of advances to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods an ALP lender will use to process, service and conclude guaranteed OL and FO loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

C. *List of Lenders.* The County Supervisor will maintain a current list of approved lenders and other lenders who express a desire to participate in the guaranteed program. This list will be made available to farmers upon request.

II. Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status

Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 and/or Attachment 2 of this Exhibit. The agreement

will not apply to branches or suboffices of the lender unless specifically named in the agreement. In cases involving the Farm Credit System (FCS), the State Director shall give ALP status, within the State Director's area of jurisdiction, to any FCS member institution provided such members do not have loan losses which either do not exceed 6 percent per year for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years. FCS member institutions having an acceptable loan loss percentage as specified above are exempt from complying with requirements of paragraph II A (1)(a) through (d) and (2). The Farm Credit Administration (FCA) will notify the FmHA Administrator in writing annually or sooner of any FCS member institution that has loan losses within the acceptable percentage specified above.

To obtain ALP status, an FCS member institution with an acceptable loan loss percentage need only execute the agreement (Attachment 1 and/or Attachment 2 of this Exhibit) and satisfy the State Director that it is using acceptable forms as provided in paragraph II A (1)(e). Even if an FCS member institution is not identified by FCA as having an acceptable loan loss percentage, that institution may still request the State Director to consider it for ALP status under paragraphs II A (1) and (2). When FCS member institutions reorganize into one association, the reorganized association must be considered for ALP Status as an initial applicant with unacceptable loan losses. Except for those FCS member institutions identified by FCA as having an acceptable loan loss percentage, ALP status will expire at the end of any approved 2-year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. The ALP status of any lender may be revoked by the FmHA State Director as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold ALP status. The name of each ALP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the ALP lender will be included.

A. Lender Approval. Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of this part. Except for FCS member institutions having an acceptable loan loss percentage as specified in the introductory text to paragraph II, lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "optional criteria" contained in paragraph II A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District or State Office may provide a lender who desires to apply for ALP status, a complete

copy of Subparts A and B of this part, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance is as outlined in the application.

(1) **Required Criteria.** Other than as noted in paragraph II A above, before a State Director approves a lender, including an FCS member institution that is not identified by FCA as having an acceptable annual percentage of loan losses, for ALP status, the requirements listed in paragraphs II A (1) (a) through (f) must be met. However, upon the request of a lender asking for ALP status, the State Director may exempt that lender from complying with the requirement of paragraph II A (1) (b) provided the lender complies with all the other requirements listed in paragraph II A (1) if the State Director is satisfied that the lender—without regard to the requirement for the exemption is being requested—is an acceptable agricultural lender with the ability to adequately make and service agricultural loans.

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A of this part.

(b) Provide information to show that agricultural loan losses—net of recovery—do not exceed the following:

(i) For FCS member institutions, either 6 percent per year of the institution's total loan portfolio for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years; or

(ii) For all other lenders, either 1½ percent per year of the lender's total loan portfolio for each of the three previous years, or 4½ percent of the lender's average loan portfolio computed for the three previous years.

(c) Have the capacity to process and service FmHA guaranteed FO loans and guaranteed OL loans/lines of credit.

(d) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(e) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, recordkeeping methods, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See §§ 1980.109 and 1980.113 of this subpart for required forms.

(f) Agree to abide by all applicable conditions of § 1980.60 of Subpart A of this part for all loan guarantees.

(2) **Optional Criteria.** Exceptions to the following criteria may be made at the discretion of the State Director.

(a) Have experience and familiarity with FmHA insured and guaranteed loan

programs. State length of time and types of loans/lines of credit.

(b) Establish that at least \$2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide a resume of designated person who will process and service guaranteed FmHA loans/lines of credit. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(d) Provide a copy of most recent Statement of Condition and description of current level of agricultural and other lending activities.

(e) Demonstrate a potential capacity for guaranteed OL loan/line of credit and guaranteed FO loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL and/or FO loans and/or OL lines of credit, subject to availability of funds, per fiscal year (October 1–September 30).

(f) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood and Mudslide, Clean Air, etc. (See §§ 1980.40 through 1980.46 of Subpart A of this part.)

(g) Agree to submit requests for guaranteed OL and/or FO loans and/or OL lines of credit to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(h) Provide any other supplemental information the lender desires to submit.

B. Subsequent Approval Period(s). Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, a new 2-year period of ALP status is not automatic. Lenders who desire to continue in ALP status are required to submit a request for subsequent approved periods at least 60 days prior to the expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnel, and if requested by the lender, determine if a new 2-year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, at a minimum, the following:

(1) A brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL loan/lines of credit and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL and/or FO lending activity and recap of any loss settlements.

(2) A current update of data required in paragraph II A of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL loan/line of credit and/or FO loan processing and servicing.

(3) Request for a new 2-year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons. An ALP lender who has not participated in the guaranteed program during the previous 2-year period must submit a request as outlined in paragraph II A of this Exhibit.

C. *Revocation of ALP Status.* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, ALP status will lapse upon expiration of any 2-year period unless the lender obtains a new agreement under paragraph II B.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet any "optional criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan or line of credit, or to protect adequately the interests of the lender and the Government. Furthermore, status, at the option of the State Director, may also be revoked if an FCS member institution that previously had acceptable loan losses as specified in the introductory text of paragraph II above is no longer identified by FCA as having acceptable losses.

State Directors will provide all county offices named in paragraph XVI of the ALP agreements (Attachment 1 and/or Attachment 2 of this Exhibit) with a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders' loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP Agreement and Subparts A and B of this Part pertaining to guaranteed OL and FO loans. County Supervisors will use their copy of the ALP Agreement to duplicate and place in the County office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any discrepancies. A maximum of 30 days will be provided to correct any deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) or line(s) of credit shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this subpart for consideration.

III. ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL Loans and Guaranteed FO Loans

A. *Processing.* Before accepting an application for a guaranteed loan or line of

credit, the ALP lender will review Subpart A and B of this part. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b) or 1980.180(c) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit and FO loans in §§ 1980.175 and 1980.180. All requests for guaranteed loans or lines of credit will be processed under Subpart A and B of this part except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 449-6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The applicant must complete and sign all parts of the Form FmHA 449-6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL loans/lines of credit or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this subpart except Form FmHA 449-12, "Request for Loan Note Guarantee" and the applicable environmental review requirements contained in Subpart G of Part 1940 of this chapter. These latter requirements remain the responsibility of the FmHA loan approval official. ALP lenders, however, are responsible for meeting the lender's requirements contained in Exhibit M of Subpart G of Part 1940. Attachment 3 to this Exhibit will be used by ALP lenders to request a guarantee from FmHA. An ALP lender will only be required to submit Form FmHA 449-6 and information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Exhibit and Attachment 3 of this Exhibit, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL loan/line of credit or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Guarantee (Line of Credit)," and the determination that all conditions, including the certification required by § 1980.60 of Subpart A of this part can be met. The ALP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g) or FO loan under § 1980.180(f) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans/lines of credit guaranteed.

C. *Liquidation of Loans/Lines of Credit.* Any liquidation of guaranteed OL loans or lines of credit or FO loans will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449-30, "Loan Note Guarantee Report of Loss." The Report of Loss will be

accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

IV. FmHA Actions

FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. FmHA County Supervisor will review each Form FmHA 449-6 and request for a guarantee, compare material with the county office copy of ALP agreement, approved forms, and methods, and immediately contact the ALP lender within 3 working days if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449-23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit or FO loan, and the purposes and terms of such loans/lines of credit.

A. If the County Supervisor's evaluation indicates the application is complete and acceptable, FmHA will provide the lender a County Committee determination of the borrower's eligibility within 14 days. This 14-day period will be contingent upon:

(1) Request for a guarantee being received by the appropriate FmHA County Office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first three loans or line or credits developed by an ALP lender. FmHA will examine the lender file on each guaranteed loan/line of credit at least annually, and semi-annually or more frequently if warranted. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of this Part.

Each Approved Lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement (Attachment 1 or 2 to this Exhibit) so that the

Lender recognizes that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for a Interest Rate Buydown under Exhibit D of this subpart and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated _____. The date will be the same date entered in paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated _____. The date will be the same date entered in paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County Office file maintained for each Loan Note Guarantee and contract of Guarantee issued.

Exhibit A, Attachment 1—FARMERS HOME ADMINISTRATION APPROVED LENDER PROGRAM (ALP)

Lender's Agreement (Loan Note Guarantee Only) for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO)

_____, (Lender) of _____ is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This Agreement does not apply to any loans involving subsidy payments to the Lender, nor does it apply to loan types other than those specifically named in this Agreement. The Agreement applies to the following offices of the Lender:

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the Lender as may be issued pursuant to the regulations for operating and/or farm ownership loans and to participate in a percentage of any loss on any such operating and/or farm ownership loan not to exceed the amount established in the particular loan note guarantee as the percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this Agreement.

THE PARTIES AGREE:

I.

The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating and/or farm ownership loan guaranteed.

II.

Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449-36, "Assignment Guarantee Agreement."

Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold under Form FmHA 449-36. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) under Form FmHA 449-36.

2. *Multinote System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and form FmHA 449-34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases insure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notice.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.* a. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the

unguaranteed portion of the loan and cannot be participated to another lender.

b. The Lender may obtain participation of only the unguaranteed portion in its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan in which the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall upon the sale succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this Agreement, and the FmHA program regulations found in Title 7 CFR, Part 1980, Subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions of this Agreement.

III.

The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and B as set forth in Form FmHA 449-14, "Conditional Commitment for Guarantee," for the particular loan.

IV.

The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V.

The Lender will certify to FmHA, prior to the issuance of a loan note guarantee for each loan, that there has been no adverse change(s) in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statement of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

VI.

Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VII.

Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. Lender may charge holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform these services

which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this Agreement.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower on any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, rescheduled or written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgages or secured party.

5. Assuring that:

(a) Taxes, assessment or ground rents against or affecting collateral are paid;

(b) The loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) The Borrower complies with all laws and ordinances applicable to the loan and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be

obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring that the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart B, § 1980.106(b)(3)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured borrower at least annually. Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of action to the FmHA office upon request.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1980, Subpart G, Exhibit M.

D. The Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

VIII.

Default by Borrower.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination of the following:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of, rescheduling or writing down the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to

permit the Borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an interest rate buydown under Exhibit D of Subpart B of 7 CFR Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) The Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower within 30 days of its receipt of the payment. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the Borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion of the principal together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The Loan Note Guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subjugated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

The FmHA will promptly notify the Lender of the Holder's(s) demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30-day payment requirement. Upon receipt of the appropriate information, the FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

IX.

Liquidation.

If the Lender concludes the liquidation of a guaranteed Loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.
3. A proposed method of making the maximum collection possible on the indebtedness.
4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation. Accounting and Reports.* When the Lender conducts the liquidation, it

will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

- a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office

for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this Agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If circumstances have changed after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. *Payment.* Final loss payments will be made within 60 days after the review of the accounting of the collateral.

X.

Protective Advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of \$3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI.

Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XII.

Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIII.

Transfer and Assumption Cases.

Refer to 7 CFR Part 1980, Subpart B. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transfer or debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XIV.

Other Requirements.

This agreement is subject to all the provisions of 7 CFR Part 1980, Subpart A and B, and any future amendments of these regulations not inconsistent with this Agreement.

XV.

Execution of Agreements.

This Agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart A and B and does not impose any obligation upon FmHA with respect to execution of any such contract.

FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI.

Notices.

All requests for Loan Note Guarantee and any notices or action will be initiated through the following FmHA County Offices

XVII.

Termination of Agreement.

Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A of 7 CFR Part 1980, Subpart B, this Agreement will terminate as to the Lender's submission of request for Loan Note Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B, two (2) years from the date set forth in paragraph XVIII unless otherwise earlier revoked by FmHA. This agreement will remain in force as to any Loan Note Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at time of expiration or revocation until those loan note guarantees still extant are concluded.

XVIII.

This Agreement is dated

LENDER
(Name)

(IRS) I.D. Tax No.)

By

Title

ATTEST: (SEAL)

UNITED STATES OF AMERICA
Farmers Home Administration

By

Title

Exhibit A, Attachment 2—FARMERS HOME ADMINISTRATION APPROVED LENDER PROGRAM (ALP)

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

(Lender) of _____ is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This Agreement does not apply to any lines of credit involving subsidy payments to the Lender nor does it apply to lines of credit types other than those specifically named in this Agreement. The Agreement applies to the following offices of the Lender:

— The United States of America, acting through Farmers Home Administration (FmHA), agrees to enter into Contract of Guarantees with the lender for Operating

Loan lines of credit and to participate in a percentage of any loss on any such operation loan line of credit advance(s) not to exceed the amount established in the particular contract of guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advance(s) the Lender enters into this Agreement.

The Parties Agree:

I.

The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular line of credit guarantee as to percentage of the principal and accrued interest on any Operating Loan line of credit advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II.

Lender's Sale of Guarantee Line of Credit by Participation

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line(s) credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operation procedure. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or borrower or members or their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line(s) of credit through participation at or subsequent to execution of the line of credit agreement(s), such line(s) of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line(s) of credit. Participation with a lender by an entity does not make the entity a holder.

III.

The Lender agrees funds advanced under the line(s) of credit will be used for the purposes authorized in Subpart B of Title 7 CFR Part 1980 as set forth in Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," for the particular line of credit.

IV.

The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or the owners has, or will have a substantial financial interest in any guaranteed line of credit Borrower. The Lender certifies that neither any guaranteed line of credit Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V.

The Lender will certify to FmHA, prior to the issuance of a contract of guarantee for each line of credit agreement, that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's Condition during the period of time from FmHA's issuance of the conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

VI.

The Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Contract of Guarantee is issued.

VII.

Servicing

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of a line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of lines of credit or loans that are not guaranteed.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing on any violations.

2. Receiving all payments on principal and interest on the line of credit advances as they

fall due. The line of credit may be reamortized, rescheduled or written down only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

- (a) Taxes, assessment or ground rents against or affecting collateral are paid;

- (b) The line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

- (c) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

- (d) Proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature which will serve as collateral without written concurrence of FmHA;

- (e) The Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the line coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A, § 1980.106(b)(3)) is not released from liability for all or any part of the line of credit except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least annually. Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of

wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. The Lender shall participate in any farm credit mediation program of a State in accordance with the rules of that system and 7 CFR Part 1980, Subpart B, § 1980.126.

VIII.

Default by Borrower

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the lender with concurrence of FmHA may include but are not limited to any curative actions contained in Subpart B of Part 1980 or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit D of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

IX.

Liquidation

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the line of credit unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed plan of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed plan of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreements and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credit.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the line of credit which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation action. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the line of credit. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation: Accounting and Reports.

When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guaranteed from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such

amount due to the outstanding principal balance owed on the guaranteed debt (See G, below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of the Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine that actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

(a) If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

(b) If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of the Agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasional by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of

the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 440-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If circumstances have changed after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Loss settlements will be paid by FmHA within 60 days after the review of the accounting of the collateral.

X.

Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of \$3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI.

Additional Loans or Advances. The Lender will not make additional expenditures or new lines of credit or loans to any borrower which has financial assistance guaranteed by FmHA without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XII.

Future Recovery. After a line of credit has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be prorated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the line of credit and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the line of credit.

XIII.

Transfer and Assumption Cases. Refer to Subpart B of Title 7 of CFR Part 1980. If a loss

should occur upon consummation of a complete transfer and assumption for less than the full amount of the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Forms FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XIV.

Other Requirements. This Agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this Agreement.

XV.

Execution of Agreements. This Agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR Part 1980, Subparts A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI.

Notice. All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA County Offices

XVII.

Termination of Agreement. Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this Agreement will terminate as to the Lender's submission of requests for Contracts of Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XVIII unless earlier revoked by FmHA. This Agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at time of expiration or revocation until those Contracts of Guarantees still extant are concluded.

XVIII.

This Agreement is dated
Lender: _____
(Name)
UNITED STATES OF AMERICA
Farmers Home Administration

(IRS I.D. Tax No)

By _____

Title _____
By _____
Title _____

Attest: _____ (Seal)

Exhibit B to Subpart B—Debt Adjustment Program—Farmers Home Administration (FmHA) Guarantees of Loans with Accompanying Debt Adjustment by Lender [Removed]

14. Exhibit B to Subpart B is removed.

15. Exhibit D to Subpart B and Attachments 1 and 2 are revised in their entirety and read as follows:

Exhibit D—Interest Rate Buydown Program

I. General

This exhibit contains the policies and procedures pertaining to an Interest Buydown Program for guaranteed Operating (OL) loans and lines of credit, described in § 1980.175 of this subpart, guaranteed Farm Ownership (FO) loans described in § 1980.180 of this subpart and guaranteed Soil and Water (SW) loans described in § 1980.185 of this subpart. Subparts A and B of Part 1980 are applicable to this exhibit except as modified by Exhibit A of this subpart and this exhibit. Authority to enter into the Interest Rate Buydown agreements provided for in this Exhibit D expires September 30, 1993. Lenders that have guaranteed loans/lines of credit which are not already involved in this program must agree that if liquidation of the loans/lines of credit become imminent, lenders will consider the borrower for an Interest Rate Buydown under this exhibit and request a determination for the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan/line of credit until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in this program.

II. Introduction

The authorities contained in this exhibit provide lenders with a tool to enable them to continue to provide credit to operations of not larger than family farms who are temporarily unable to project a positive cash flow on all income and expenses including debt service without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan/line of credit. In return, FmHA will make annual interest rate buydown payments to the lender in an amount not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this exhibit will in no case exceed 2 percentage points.

III. Definitions

A. Cash flow—a projection listing on a 24-month basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cashflow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

B. *Interest Rate Buydown Agreement*—(Form FmHA 1980-58.) The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate buydown.

C. *Positive Cash Flow*—A cash flow projection, as defined in § 1980.106(b)(17) of this subpart.

IV. Program Administration

County Supervisors are authorized to approve interest rate buydown agreements providing the following requirements are met by the lender:

A. The measures for assessing borrower's financial viability will include considerations based on debt to asset ratio and returns on assets and, where applicable, returns on equity.

B. For those borrowers currently indebted for an FmHA guaranteed loan(s) or line(s) of credit where the guaranteed loan/OL line of credit is to be considered for an interest rate buydown under this exhibit, the lender must demonstrate that positive cash flow projection on all income and expenses, including debt service, is not possible by rescheduling or reamortizing the account in equally amortized installments as described in § 1980.124 of this subpart. If a positive cash flow can be achieved using rescheduling or reamortizing authorities, subject to the requirements outlined in § 1980.124, the borrower's account will be rescheduled or reamortized. If a positive cash flow projection is then possible, the borrower is not eligible for an interest rate buydown.

1. For borrowers currently indebted for an FmHA guaranteed loan/line of credit who wish consideration under this exhibit, the lender will submit Attachment 2 of this exhibit with all requests for all interest rate buydowns.

2. In addition, the following information will be submitted by the lender:

(a) Verification of off-farm employment, if any

(b) Form FmHA 440-32, "Request for Statement of Debts and Collateral," or similar documentation provided by approved lenders.

(c) Documentation of the borrowers and lenders compliance with the requirements of Exhibit M to Subpart C of Part 1940 of this chapter, if the affected loan is not already subjected to this provision.

C. Applications from individuals who are not presently indebted for an FmHA guaranteed loan/line of credit shall be processed in accordance with § 1980.113 of this subpart and this exhibit. In addition, the lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate of the borrower's loan(s)/line(s) of credit.

D. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in Subpart A of Part 1903 of this chapter. If other creditors adjust their debts and the proposed interest rate buydown results in a positive cash flow, interest rate buydown may be approved.

E. If a positive cash flow cannot be achieved even with other creditors

voluntarily adjusting their debts and the interest rate buydown, the interest rate buydown will not be approved.

F. In order for a borrower's loans/lines of credit to be eligible for an interest rate buydown, a typical plan of operation must show that a positive cash flow can be expected during the initial 24-month buydown period. For those loans/lines of credit agreements with terms less than 24 months, the operation must show a positive cash flow for the term of the loan/line of credit agreement. All loan/line of credit with terms exceeding the buydown period must demonstrate that the borrower will be able to project a positive cash flow on all income and expenses, including debt service, after the buydown agreement expires. Further, if the lender proposes a term for the interest rate buydown which exceeds 24 months, the lender will provide FmHA with future financial statements documenting the necessity for the increased term. In no case will the Federal buydown period exceed three years.

G. Any holder(s) must agree to the interest rate reduction in writing. If the holder does not consent to the interest rate reduction proposed by the lender, the lender must repurchase the unpaid portion of the loan from any holder(s) before the interest rate buydown can be granted. When FmHA purchases a portion of a guaranteed loan, buydown payments on that portion shall cease.

H. The Interest Rate Buydown Agreement will be attached to the promissory note(s) or line of credit agreement. The promissory note(s) or lines of credit agreement, cannot exceed the interest rate the lender charges its average farm customer, prior to any writedown by the lender, as outlined in § 1980.175(e), 1980.180(e)(2) or 1980.185(e)(1) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of interest rate changes by an "allonge" attached to the promissory note(s) or line of credit agreement or other legally effective amendment of the interest rate; however, no new notes or line of credit agreements may be issued. If the lender elects to use a variable rate note or line of credit agreement, the fixed rate of interest charged during the buydown period will be calculated *not to exceed* the average variable rate charged the lenders average farm customer (as defined in §§ 1980.175(e), 1980.180(e)(2), or 1980.185(e)(1)) over the past 90 days. The promissory note(s), line of credit agreements and any attachments to these agreements, must schedule repayment in accordance with the terms for the applicable loan type set forth in §§ 1980.175 (f) and (g), 1980.180 (e) and (f), or 1980.180 (e) and (f) of this subpart.

I. FmHA will pay the lender any interest rate buydown equal to one-half of the lender's writedown of interest percentage points, except that such payments will in no case exceed the cost of reducing such interest by more than two percentage points. The lender will adjust its interest rate in increments of .25%, round the reduced rate of interest to the nearest .25% necessary to

achieve a positive cash flow on any individual borrower's accounts. Once this eligibility is established, the lender may reduce the interest rate paid on a loan/line of credit to a point equal or exceeding that necessary to achieve a positive cash flow.

V. Approval of Interest Rate Buydown

If the approval official determines the buydown will be approved in accordance with paragraph IV of this exhibit, in addition to the determinations required in § 1980.115 Administrative A and B, the approval official will:

A. Prepare Form FmHA 1940-1, "Request for Obligation of Funds." This form will be used to obligate the buydown portion for those loans presently guaranteed where the interest rate is subsequently bought down, and to obligate the loan and interest rate buydown for initial loans.

B. The approval official will execute Forms FmHA 1940-1 and distribute copies in accordance with the FMI. The Finances Office will enter the obligation of funds on their records for the interest rate buydown and/or loan and notify the approval official by forwarding the original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

C. A loan or line of credit for which the interest rate was previously reduced under this exhibit, may receive a subsequent buydown provided the total buydown term(s) over the life of the loan does not exceed 3 years and the buydown is approved on or before September 30, 1993.

VI. Interest Rate Buydown Closing

A. The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit in which the interest rate is bought down under this exhibit.

B. See § 1980.61(b)(1) of Subpart A, § 1980.118(c) and Administrative B of Subpart B.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the borrower will execute Form FmHA 1980-58. In NO CASE will Form FmHA 1980-58 be executed prior to the determination of availability of funds for the loan/line of credit and buydown as evidenced on Form FmHA 440-57

2. An original Form FmHA 1980-58 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980-58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract of Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), or the holder(s) agree(s) to any reduction in interest rate, a copy of Form FmHA 1980-58 will be attached to the original Form FmHA 449-36 "Assignment Guarantee agreement," along with a copy of the borrower's note(s) with "allonge" and Loan Note Guarantee. Form FmHA 449-36 will be revised to reflect the note amounts. At the top of the face of the document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated _____ and Form _____"

FmHA 1980-58, "Interest Rate Buydown Agreement," which temporarily reduces the interest rate on the promissory note to an effective interest rate of ____%. This revision will be initialed and dated by the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown Agreement will be kept in the County Office, attached to the appropriate Loan Note Guarantee or Contract of Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of loans presently guaranteed by FmHA eligible for interest rate buydown (Loan Note Guarantee cases only). See Item number 10 of Form FmHA 449-36 and Item number 6 of Form FmHA 1980-58. When FmHA purchases a portion of the guaranteed loan buydown payments on that portion shall cease. The interest rate reduction shall remain in effect.

VII. Interest Rate Buydown Claims and Payments

Claims and payments will be processed in accordance with paragraph 3 of Form FmHA 1980-58. Such claims and payments will be processed in accordance with paragraph 2 of Form FmHA 1980-58.

VIII. Term of Buydown Agreement

The term of a buydown agreement entered into under this exhibit shall not exceed 3 years or the outstanding term of the loan involving the interest rate buydown, whichever is less.

IX. Cancellation of Interest Rate Buydown

Form FmHA 1980-58 is incontestable except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. Excessive Interest Rate Buydown

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. Transfer and Assumption of Loans Involving Interest Rate Buydown

Transfers will be processed in accordance with § 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Rate Buydown Agreement only in cases where the transferee was liable for the debt at the time the buydown was granted. Under no other circumstances will the buydown be transferred. If the buydown is necessary for the transferee to achieve a positive cash flow, the lender must make application for an initial buydown under this exhibit.

XII. Review by FmHA Employees

The lender will submit Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," annually along with detailed calculations and

a statement of activity on the borrower's account to support the claim. The County Supervisor will approve, if correct, and forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when buydown claims are involved.

Exhibit D, Attachment 1

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration (location)

Dear _____:
The Farmers Home Administration (FmHA) has authority under the Food and Security Act of 1985 (Pub. L. 99-198) to temporarily make payments to lenders to reduce borrower interest rates on a guaranteed loan to eligible applicants and borrowers. The Interest Rate Buydown Program provides lenders with a tool to enable them to continue to provide credit to family farm operators who are temporarily unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual payments to the lender in an amount of not more than 50 percent of the cost of reducing the interest rate on the loan. Payments made to a lender under this authority may not exceed two percentage points.

Borrowers with existing guaranteed Farm Operating (OL), Farm Ownership (FO), and Soil and Water (SW) guaranteed loans, may have the interest rate on their loans bought down by FmHA.

If you would like additional information regarding the Interest Rate Buydown Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

COUNTY SUPERVISOR

Exhibit D, Attachment 2

TO: County Supervisor, FmHA

SUBJECT: Request for Interest Rate Buydown
BORROWER'S NAME: _____

In connection with the subject application for an interest rate buydown, this lending institution certifies:

(1) The loan balance of \$_____ is the amount requested for an interest rate buydown. If a line of credit, the line of credit balance is \$_____, and the line of credit ceiling amount of \$_____ is the amount requested for an interest rate buydown.

(2)(a) The interest rate charged the lender's average farm customer, determined in accordance with §§ 1980.175(e), 1980.190(e)(2) or 1980.185(e)(1) of this subpart, is _____. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

(b) The lender's interest rate to the subject borrower prior to writedown is ____% (may not exceed (2)(a)).

(c) The lender's writedown is ____%.

(d) The interest rate to be charged with the writedown to the borrower is ____%.

(3) The amount of interest written down is permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt.

(4) The lender's interest rate reduction to the borrower will result in a reduced payment schedule for the term of the buydown and that a positive cash flow on all income and expenses, including debt service, will be expected during the buydown period. In cases where the term of the loan exceed the term of the buydown, the borrower must project a positive cash flow on all income and expenses, including debt service, after the buydown period terminates.

(5) The borrower's cash flow projections have been prepared in accordance with Part 1980, Subpart B, § 1980.113(d)(8), and are attached to this document.

WARNING: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both."

(Name of Lender)

Lender's IRS ID

By _____

Date _____

Title _____

16. Exhibit E to Subpart B is added, to read as follows:

Exhibit E—Interest Rate Reduction Program

Demonstration Project for Purchase of Certain Farm Credit System Acquired Farm Land

I. General

This exhibit contains the policies and procedures pertaining to an Interest Rate Buydown Program for guaranteed Farm Ownership (FO) loans described in § 1980.180 of this subpart. Subparts A and B of Part 1980 are applicable to this exhibit except as modified by Exhibit A of this subpart and this exhibit. Authority to enter into the Interest Rate Buydown Demonstration Project expires January 6, 1991.

II. Introduction

This exhibit contains a means by which the Farm Credit System (FCS) can sell certain acquired lands to eligible FO applicants, as provided by section 351(h) of the Consolidated Farm and Rural Development Act. Only those properties owned by FCS member institutions certified to issue preferred stock under section 6.27 of the Farm Credit Act of 1971 may be purchased under this Exhibit. The Farm Credit Administration (FCA) will provide the Farmers Home Administration (FmHA) with a list of these

certified FCS member institutions, as further explained in Memorandum of Understanding between FmHA and FCA found in FmHA Instruction 2000-00 (available in any FmHA office). FmHA may issue certificates of eligibility to eligible applicants to reduce the interest rate paid by such applicants on FmHA guaranteed loans obtained from eligible Farmer Program Lenders to purchase properties owned by the Farm Credit System. The sale of land by the Farm Credit System under this program is limited to an aggregate land value not to exceed \$250,000,000 at fair market value each fiscal year.

Lenders that participate in this Demonstration Project will enter into an agreement with FmHA to reduce the interest rate paid on a loan. In return, FmHA will make annual interest rate buydown payments to the lender in the amount of 4 percentage points. Those lender who permanently reduce the interest charged on the guaranteed loan by at least 1 full percentage point will receive a 95 percent guarantee. The buydown of interest by FmHA will be in effect for a term equal to the outstanding term of such loan, or 5 years, whichever is less.

III. Definitions

A. *Cash Flow*—a projection listing on a 24 month basis, of all anticipated cash inflows (including all farm and non-farm income) and all expenses to be incurred by the borrower during such period (including all farm and non-farm debt service and other expenses). Production records and prices used in the preparation of a cash flow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

B. *Certificate of Eligibility*—The County Committee will certify on Form FmHA 440-2, "County Committee Certification or Recommendation" that the applicant is eligible for a guaranteed FO loan and to participate in the Demonstration Project. The County Committee will also certify that the farm is suitable for the program in accordance with § 1980.106(b)(6) of this subpart.

C. *Interest Rate Buydown Agreement*—(Form FmHA 1980-58.) The signed agreement between FmHA, the lender, and the borrower, setting forth the terms and conditions of the interest rate buydown.

D. *Personal Funds*—Any funds listed on an applicant's financial statement or obtained through a loan, whether or not secured by other property.

E. *Positive Cash Flow*—A cash flow projection, as defined in § 1980.106(b)(17) of this subpart.

IV. Program Administration

County Supervisors are authorized to approve interest rate buydown agreements for the Demonstration Project providing the following requirements are met by the applicant, FCS and the lender.

A. The measures for assessing applicant's financial viability will include considerations based on debt to asset ratios and returns on assets and, where applicable, returns on equity.

B. Applications from individuals who are seeking to purchase FCS acquired farm lands with a guaranteed FO loan shall be processed

in accordance with § 1980.113 of this subpart and this exhibit. In addition, the lender will submit Attachment 2 of Exhibit D with the application. The lender must demonstrate that a positive cash flow projection is not possible without reducing the interest rate on the FO loan.

C. Applicants who seek to purchase FCS acquired farm lands and who do not have a lender involved in that purchase will submit an application to FmHA. The County Committee will review the application, which will also include a description of the property, and render a decision as to the eligibility of the applicant and the suitability of the farm. If the County Committee determines the applicant is eligible and that the farm meets the requirements of § 1980.106(b)(6) of this subpart, then the County Supervisor will determine if the request is feasible. Once this determination is made the County Supervisor will assist the applicant in completing a request for a Loan Note Guarantee which the applicant will submit to the lender of the applicant's choice. If the request is rejected by either the County Committee or the County Supervisor, the applicant will be advised of the opportunity for an appeal as set out in Subpart B of Part 1900 of this chapter.

D. Applicants must provide a down payment equal to at least 15 percent of the land purchase price using personal funds, as defined in paragraph III D of this Exhibit.

E. Applicants must meet the applicable requirements of FmHA Instruction 1940-G including providing SCS Form CPA-26, "Highly Erodible Land and Wetland Conservation Determination," and Form AD-1026, "Highly Erodible Farmland Wetland Conservation Certification," as required by Exhibit M to Subpart G of Part 1940 of this chapter.

F. The FCS must price suitable farm land (family farm size as determined by the County Committee) to eligible applicants at the fair market value.

G. FmHA will pay the lender an interest rate buydown of 4 percentage points.

H. Lenders will receive a 90 percent guarantee in connection with a 4 percentage point interest rate buydown.

I. A lender who permanently reduces the interest rate currently charged on the loan by at least 1 full percentage point will receive a 95 percent guarantee.

J. The terms of the buydown will not exceed the outstanding term of such loan, or 5 years, whichever is less.

K. In order for an applicant to qualify for a loan and interest rate buydown, a typical plan of operation must show that a positive cash flow as defined in § 1980.106(b)(17) of this subpart can be expected during the buydown period and after the buydown agreement expires.

L. The Interest Rate Buydown Agreement will be attached to the promissory note(s). The promissory note(s), cannot exceed the interest rate the lender charges the average farm customer, prior to any writedown by the lender, as outlined in § 1980.180(e)(2) of this subpart. The lender may only charge a fixed rate of interest during the term of the buydown agreement. The lender is responsible for the legal documentation of

interest rate changes by an "allonge" attached to the promissory note(s) or other legally effective amendment of the interest rate; however, no new notes may be issued. If the lender elects to use a variable rate note, the fixed rate of interest charged during the buydown period will be calculated *not to exceed* the average variable rate charged the lender's average farm customer (as defined in § 1980.180(e)(2) over the past 90 days). The promissory note(s) and any attachments to these agreements, must schedule repayment in accordance with the terms for the loan set forth in §§ 1980.180 (e) and (f) of this subpart.

V. Approval of Loan Guarantees and Interest Rate Buydown

Authority to approve loan guarantees and, interest rate buydown agreements expires January 6, 1991. If the FmHA approval official determines the buydown will be in accordance with paragraph VI of this exhibit, in addition to the determinations required in § 1980.115 Administrative A and B, the approval official will:

A. Prepare Form FmHA 1940-1, "Request for Obligation of Funds."

B. Execute Form FmHA 1940-1 and distribute copies in accordance with the FMI. The Finance Office will enter the obligation of funds on their records for the interest rate buydown and notify the approval official by forwarding the original and one copy of Form FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request."

VI. Interest Rate Buydown Closing

A. The lender will prepare and deliver a Form FmHA 1980-19, "Guaranteed Loan Closing Report," for each guaranteed loan in which the interest rate is bought down under this exhibit.

B. See §§ 1980.61(b)(1), 1980.118(c) and Administrative B.

1. If FmHA finds that all requirements have been met, the lender, FmHA and the applicant will execute Form FmHA 1980-58, "Interest Rate Buydown Agreement." In NO CASE will Form FmHA 1980-58 be executed prior to the determination of availability of funds for the loan and buydown as evidenced on Form FmHA 440-57.

2. An original Form FmHA 1980-58 will be prepared for each note executed. All originals of Form FmHA 1980-58 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee. In the event the lender assigns the guaranteed portion of the loan to holder(s), a copy of Form FmHA 1980-58 will be attached to the original Form FmHA 449-36, "Assignment Guarantee Agreement," along with copy of the borrower's note(s) with "allonge" and Loan Note Guarantee. Form FmHA 449-36 will be revised to reflect the note amounts. At the top of the face of document type: "This Assignment Guarantee Agreement is subject to an attachment(s) to the promissory note dated _____ and Form FmHA 1980-58, "Interest Rate Buydown Agreement," which reduces the interest rate on the promissory note to an effective interest rate of _____. This reduction is _____ (insert "temporary" if there is no 95% guarantee involved or "permanent if a 95% guarantee is involved)." This revision will be initiated and dated by

the lender, holder, and FmHA. Copy(ies) of the Interest Rate Buydown Agreement will be kept in the County Office, attached to the appropriate Loan Note Guarantee. Additional copies may be retained by the State Office. Copies of all issued Interest Rate Buydown Agreements will be kept in the file.

3. Repurchase of guaranteed loans having interest rate buydown under this Demonstration Project. See Item number 10 of Form FmHA 449-36 and item number 6 of Form FmHA 1980-58. When FmHA purchases a portion of the guaranteed loan, buydown payments on that portion shall cease, but the interest rate reduction shall remain in effect.

VII. Interest Rate Buydown Claims and Payments

Claims and payments will be processed in accordance with paragraph 3 of Form FmHA 1980-58. Such claims and payments will be processed in accordance with paragraph 2 of Form FmHA 1980-58.

VIII. Term of Buydown Agreement.

The term of a buydown agreement entered into under this exhibit shall not exceed 5 years or the outstanding term of the loan involving the interest rate buydown, whichever is less.

IX. Cancellation of Interest Rate Buydown

Form FmHA 1980-58, is incontestable except for fraud or misrepresentation, of which the lender has actual knowledge at the time the Interest Rate Buydown Agreement is executed, or for which the lender participates in or condones.

X. Excessive Interest Rate Buydown

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Rate Buydown Agreement and collect from the lender any amount of reduction granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive.

XI. Transfer and Assumption of Loans Involving Interest Rate Buydown

Transfers will be processed in accordance with § 1980.123 of this subpart. If the buydown is necessary for the transferee to

achieve a positive cash flow the lender must make application for an initial buydown under this exhibit.

XII. Review by FmHA Employees

The lender will submit Form FmHA 1980-24, "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," annually along with detailed calculations and a statement of activity of the borrower's account to support the claim. The County Supervisor will approve such requests, if correct, and forward to the Finance Office for payment. FmHA may review audit reports by the lender's supervising agency when buydown claims are involved.

17. Exhibit F to Subpart B is added and reads as follows:

Exhibit F—Shared Appreciation Agreement (PREPARE ONE FOR EACH LOAN/LINE OF CREDIT TO BE WRITTEN DOWN)

This Agreement is entered into between (Lender's name) (called "Lender") and (Borrower's name) (called "Borrower") on (Date) and expires on (Date) (maximum term of ten (10) years).

Borrower is indebted to Lender for a loan or line of credit as evidenced by the note(s) or line of credit agreement(s) described below:

Date	Principal amount	Interest rate	Due date
------	------------------	---------------	----------

This Agreement is attached to the note(s) or line of credit agreement(s) described above. As of the date of this Agreement, before write down, the unpaid principal balance on this note or line of credit agreement was \$_____ and the unpaid interest balance was \$_____. If a line of credit agreement is involved, the new line of credit ceiling is \$_____, and no new advance will be made under the line of credit agreement(s).

The note or line of credit agreement described above is secured by the following real estate security instruments:

Grantor	Date of security instrument	Records of county state	Book or reel	Page
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Lender agrees to write down \$_____ of principal and accrued interest of the above-described note or line of credit agreement. After the write down, there is now due and owing the principal sum of \$_____ plus interest in the sum of \$_____ together with interest accruing from the date of this agreement on the unpaid principal balance at the rate of _____%.

As a condition to, and in consideration of, Lender writing down the above amounts and restructuring the loan, Borrower agrees to pay Lender an amount according to one of the following payment schedules:

1. Seventy-five (75) percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement as described in the above security instrument(s) between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan or line of credit in full, ceases farming or transfers title of the security, if such event occurs four (4) years or less from the date of this Agreement.

2. Fifty (50) percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement above as described in the security instruments between the date of this Agreement and either the expiration date of this Agreement or the date Borrower pays the loan or line of credit in full, ceases farming or transfers title of the security, if such event occurs after four (4) years but before the expiration date of this Agreement.

The amount of recapture by Lender will be based on the difference between the value of the security at the time of disposal or cessation by Borrower of farming and the value of the security at the time this Agreement is entered into. Both values will be determined through an appraisal conducted by Lender.

(Borrower signature)

(Lender signature)

Date: April 22, 1988.

Laverne Ausman,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 88-13418 Filed 6-16-88; 8:45 am]

BILLING CODE 3410-07-M

ent to

Test Report Federal Land

Friday
June 17, 1988

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3000, etc.

Minerals Management; Onshore Oil and
Gas and Geothermal Leasing; Final
Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280

[AA-620-88-4111-01-24-10; Circular No. 2608]

Minerals Management; General Oil and Gas Leasing; Noncompetitive Leases; Competitive Leases: Oil and Gas Leasing—National Petroleum Reserve—Alaska: Onshore Oil and Gas Operations: Onshore Oil and Gas Unit Agreements—Unproven Areas; Geothermal Resources Leasing; General: Geothermal Resources Unit Agreements—Unproven Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the existing regulations covering competitive and noncompetitive onshore oil and gas leasing on Federal mineral lands managed by the Bureau of Land Management, including Federal minerals underlying National Forest System lands, to comply with the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100-203), enacted as part of the Omnibus Budget Reconciliation Act of 1987, hereinafter referred to as the Reform Act. Section 5107 of the Reform Act requires that final regulations be issued within 180 days after the date of enactment, December 22, 1987, to be effective when published in the *Federal Register*. This final rulemaking also contains amendments to implement bonding and reclamation provisions contained in the Reform Act as well as revisions of bonding requirements recommended by a Bureau of Land Management task force that reviewed bonding procedures for oil and gas and geothermal resources leasing.

The provisions of this final rulemaking include procedures for the conduct of oral auctions by each Bureau of Land Management State Office at least quarterly for lands available for oil and gas leasing. The payments required on the day of the auction for each parcel bid on are required to include the national minimum acceptable bid of \$2 per acre, the total first year's rental, and a \$75 administrative fee to help defray the costs of the sale. The remainder of the bonus bid moneys for each parcel are required to be remitted within 10 working days from the last day of the auction, otherwise all moneys submitted are forfeited. Noncompetitive offers for parcels not sold will be accepted for a 2-

year period beginning the first business day following the auction or, where formal nominations are used, the first business day following the posting of the sale notice. Those offers filed from the first day following the end of the competitive process until the end of that same month are required to be described only by the parcel number used in the sale list or notice. For the remainder of the 2-year period, the legal land description of the parcel(s) or any portion thereof must be provided. In addition to offering parcels selected by the Bureau, the final rulemaking provides administrative flexibility to allow for either informal expressions of interest or a formal nomination process to determine the lands to be offered competitively. As stated later in this preamble, the Director elects to permit informal expressions of interest but declines to implement a formal nomination process at this time.

Additionally, noncompetitive offers may be filed on certain unleased lands prior to the competitive process. However, no noncompetitive lease may issue for any such lands until they have been offered competitively and filed to receive a bid. The final rulemaking allows letters of credit and certificates of deposit as acceptable forms of bonding, and also requires 100 percent bond coverage for any entity that has failed to comply with the reclamation requirements on other leases over the past 5 years. For the majority of operators, the existing bond amounts are considered adequate to ensure the complete and timely reclamation of the lease tract and restoration of any lands or surface waters adversely affected by lease operations. An acceptable surface use plan of operations, in addition to the drilling plan, is required from all operators prior to approval, following 30 days posting, of the drilling permit by the authorized officer.

EFFECTIVE DATE: June 17, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (500), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Judith I. Reed, (202) 653-2190.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the regulations in 43 CFR Parts 3000, 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 was published in the *Federal Register* on March 21, 1988 (53 FR 9214), with a 30-day comment period. During the comment period, comments were received from 94 sources: 62 from business interests, primarily related to the oil and gas industry; 4 from

attorneys; 11 from associations; 3 from State Governments; 1 from a Member of Congress; and 13 from Federal agencies. A few comments requested that the comment period be extended. Other commenters did not request an extension of the comment period, but rather suggested that the Department continue to solicit comments or that public hearings be held. Because of the short statutory deadline under section 5107 of the Reform Act, the Bureau of Land Management could not allow an extension of the comment period and still be able to meet the statutory 180-day deadline. Many of the Bureau State Offices have held oil and gas meetings and forums during this 6-month period to describe and discuss the program changes and to address a great many of the questions and comments raised concerning the changes required by the Reform Act. The Bureau State Office oil and gas meetings will continue to provide a forum to discuss matters concerning the leasing program. The Bureau will consider reviewing the regulations implementing new provisions mandated by the Reform Act in connection with the statutory provision for the Secretary's review, following the second anniversary of the Reform Act, of the minimum acceptable competitive bid.

A few comments expressed concern regarding the impact of the Reform Act and its implementing regulations on independent operators of the oil and gas industry. The comments stated that the Federal onshore oil and gas leasing provisions of the Reform Act would pressure the independent operators and limit wildcat drilling and exploration. The Bureau of Land Management is aware of these concerns. The final rulemaking allows as much administrative flexibility and simplicity as possible within the constraints of the Reform Act, to serve the public interest.

Numerous comments were received on specific sections of the proposed rulemaking. The comments and the action taken in response to them are discussed in this preamble. In some instances, comments were concerned with matters that were addressed in the final rulemaking published on May 16, 1988 (53 FR 17340).

Part 3000—Minerals Management; General

One comment suggested that authority citations be limited to Groups rather than Parts of each Code of Federal Regulations section. The regulations of the Office of the Federal Register require that an "authority citation" be included prior to each part of the rules. The

authority section also is included within certain parts of the Code of Federal Regulations since it makes the part complete, particularly where there are special statutory provisions in certain parts that need to be fully identified in the authority section of the specific rule part.

Two comments recommended that the citations of authorities should include the Federal Oil and Gas Leasing Reform Act of 1987. Since the Reform Act is an amendment to the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), no further citation is required. The final rulemaking makes no change in the authority citations contained in the proposed rulemaking.

Section 3000.0-5 Definitions.

A few comments suggested removal of the proposed rulemaking § 3000.0-5(f)(1) that would allow parcel nominations of expressions of interest to be filed in a Bureau of Land Management office other than the Bureau office having jurisdiction over the lands. This suggestion is adopted by the final rulemaking. Experience during the test sales has shown that the handling of nominations by another Bureau office is a cumbersome process. This section of the regulation has been removed in the final rulemaking.

Some comments suggested that a new paragraph "(p)" be added in § 3000.0-5 of the final rulemaking to define "control" as found in section 5102(d) of the Reform Act (30 U.S.C. 226(g)). The final rulemaking has been amended at § 3102.5-1(f) to include a reference to § 3400.0-5(rr) for a definition of "controlled by or under common control with."

Section 3000.4 Appeals.

A few comments noted an inconsistency between the appeal provisions of this section of the existing regulations and those contained in §§ 3101.7-3 and 3120.1-3 of the proposed rulemaking. This section has been amended in the final rulemaking to add certain citation cross-references to clarify when the appeal provisions of 43 CFR Part 4 are not wholly applicable.

Section 3000.9 Enforcement.

Several comments addressed § 3000.9 of the proposed rulemaking. The majority of the comments expressed a need to clarify and establish the limits of this provision. Most of the comments were concerned that parties other than the Government would use the new provision of the Mineral Leasing Act to create a private right of action. One comment suggested that the anti-fraud provisions of the Reform Act were aimed only at past abuses. One

comment expressed the view that the final rulemaking should limit the applicability of this provision and penalties to leases issued under the mineral leasing laws subsequent to enactment of the Reform Act. One comment expressed concern that the wording of the regulation does not allow the Bureau of Land Management special agents, U.S. Postal Inspectors, the authorized officer, and others, to participate in enforcement actions. The enforcement paragraph in the proposed rulemaking was intended to recognize the existence of section 41 of the Mineral Leasing Act. The provisions of this section of the Act, including the interpretation thereof, are under the jurisdiction of the Department of Justice. The language in the regulation does not preclude such other parties from assisting the Justice Department in carrying out the enforcement provisions of the Reform Act. The final rulemaking adopts the proposed language without change.

Part 3100—Oil and Gas Leasing

Section 3100.0-3 Authority.

One comment expressed concern about § 3100.0-3 (a)(2) and (b)(2) of the proposed rulemaking, and suggested that a surface managing agency would informally, without proper procedure, recommend wilderness allocation for lands whenever it received a leasing request. The comment requested identification of the procedures for recommending wilderness allocation. The Bureau is not aware of any specific procedures by which a surface managing agency recommends that land be allocated for wilderness. The Bureau interprets this provision of the regulations to refer to lands that the surface managing agency has already recommended for wilderness allocation to the President or to the Congress. The final rulemaking adopts the proposed language of § 3100.0-3 (a)(2) and (b)(2) without change.

Another comment suggested that lease offers within the specific types of wilderness study areas identified in § 3100.0-3 (a)(2) and (b)(2) of the proposed rulemaking that were pending upon enactment of the Reform Act should not be rejected, and contended that the provision of the new law prohibiting leasing of these areas did not require rejection of such pending offers. Apart from this rulemaking, by administrative action, the Bureau of Land Management will keep as pending those pending offers located in Bureau wilderness study areas or in areas allocated for wilderness or further

planning in Executive Communication 1504.

One commenter suggested that § 3100.0-3(g)(4) concerning National Parks and Monuments be revised to be consistent with the terminology used in § 3100.0-3 (a)(2) and (b)(2) of the final rulemaking published in the *Federal Register* on May 16, 1988 (53 FR 17340). The Bureau of Land Management concurs and this change to refer to units of the National Park System has been adopted in the final rulemaking.

Section 3100.0-5 Definitions.

Several comments suggested that "control" for purposes of determining compliance with section 5102(d) of the Reform Act (30 U.S.C. 226(g)) should be defined in § 3100.0-5 of the regulations. The final rulemaking clarifies this matter by placing in § 3102.5-1(f) a cross-reference to the definition contained in 43 CFR 3400.0-5(rr) of the existing regulations. The requirements for "control" in section 5102(d) of the Reform Act are consistent with those in the Mineral Leasing Act, 30 U.S.C. 201(a)(2)(A) pertaining to control of Federal coal lease holdings. There is further discussion of this matter later in this preamble under § 3102.5.

A few comments suggested that the Bureau was premature in removing the definition of a "known geological structure" in this section and in § 3100.3 of the existing regulations. However, since the "grandfathered" offers will be adjudicated under the regulations in effect at the time of filing, which remain available for reference in earlier editions of the CFR, this provision is now obsolete and should not be retained. Including it in current regulations could cause confusion when new offers are submitted.

Several comments noted that Subpart 3110 and the definition in § 3100.0-5(k) of the proposed rulemaking failed to allow for the filing of noncompetitive offers prior to the competitive offering of such lands. The commenters suggested that such offers be allowed for wildcat lands for leasing such lands so long as they are first processed through the competitive process. This recommendation is adopted. The definition of the term "offer for noncompetitive lease" in paragraph (k) of this section in the proposed rulemaking has been removed. A specific definition of this term is not necessary. Subpart 3110 more properly addresses the provisions concerning noncompetitive lease offers. Further discussion of this provision is made later in this preamble under Subpart 3110.

A few comments suggested that § 3100.0-5(1) of the proposed rulemaking be amended to require that all bids be on a per-acre basis. The type of approach of bidding has not been specified in the final rulemaking in order to allow administrative flexibility in setting bidding procedures by individual Bureau of Land Management State Offices. Further discussion on this issue is made later in this preamble in conjunction with Subpart 3120.

Section 3101.1-3 Stipulations and information notices.

A technical change is made in this section of the final rulemaking published on May 16, 1988 (53 FR 17340) to clarify that when noncompetitive lease offers are filed during the 2-year period subsequent to competitive offering, the offeror is deemed to have agreed to all applicable lease stipulations that are indicated in the list or notice of parcels available that was posted in the proper BLM office.

In response to comments made on § 3110.4 of the proposed rulemaking requesting that offerors be notified of the stipulations placed on lands in offers filed prior to a competitive offering, the final rulemaking amends § 3101.1-3 to specify that, unless the offer is withdrawn, the offeror is deemed to have agreed to the stipulations applicable to the parcel as indicated in the List of Land Available for Competitive Nominations or the Notice of Competitive Lease Sale. Further discussion may be found later in this preamble under § 3110.6.

Section 3101.1-4 Modification or waiver of lease terms and stipulations.

Use of the term "waiver" in this section of the proposed rulemaking resulted in misunderstanding in numerous comments. There are situations where a stipulation is no longer needed to protect other resources and under such situations waiver is an appropriate remedy as well as lease modification. The Bureau will undertake to identify such actions which are deemed substantial and, as required by statute, provide at least 30 days notice.

Two comments on this section of the proposed rulemaking suggested that the proposed language does not fully implement the Reform Act in that all stipulation "waivers" would not be subjected to public review. These commenters contended that the Reform Act's reference to "substantial modification" of lease terms should include all stipulation "waivers." Given the nature of stipulation exceptions that are generally granted, and the basis used for granting such exceptions, it is

clear that not all involve substantial modification of the lease terms. Approval of waiver or modification will reside with the authorized officer who is in the best position to exercise that judgment.

Some of the comments suggested that this section specifically provide lessees and operators an opportunity to request waivers and require the authorized officer to make a determination on a waiver within 30 days of receipt of evidence of whether the condition justifying a stipulation modification continues to exist. No change is made in the final rulemaking to accommodate these comments because lessees and operators are not precluded from petitioning for a lease modification. However, consideration of lease modifications should ordinarily be prompted by a specific proposal for lease operations rather than by a desire to, in effect, renegotiate the terms of a lease. A technical change is made in the final rulemaking to make it clear that a substantial modification or waiver of a lease term subsequent to lease issuance is also required to be subject to public review for at least 30 days.

A few comments requested that the final rulemaking clarify, with respect to National Forest System lands, who is the appropriate authorized officer, a representative of the Forest Service, the Bureau, or both agencies. These comments also suggested that the final rulemaking require that the authorized officer follow the posting procedures required in the Reform Act in such a manner that the stipulation modification would be required to be posted concurrently with the Application for Permit to Drill in order to avoid additional delay in development plans of an operator. Some comments also suggested that the time necessary for the Bureau to identify the need for stipulation waivers not identified by the operator could delay posting of the Application for Permit to Drill. Operators and the public are advised that posting of a lease waiver or modification will be as prompt as possible. The final rulemaking has not adopted this suggestion. The authorized officer for any lease waiver or modification is the Bureau of Land Management State Director since that is the office of lease issuance. However, with respect to National Forest System lands, the Bureau cannot waive or modify a stipulation that involves surface disturbance without the approval of the U.S. Forest Service since the Reform Act directs the Secretary of Agriculture to regulate all surface disturbing lease activities within the National Forest System.

Section 3101.7-1 Federal lands administered by an agency outside of the Department of the Interior.

Numerous comments were received on this section. Some of the comments recommended that the final rulemaking make it clear whether approval from the surface managing agency to lease is required to be received prior to or after a competitive lease sale. A few comments objected to the requirement that the surface managing agency must give approval before leasing. It is Bureau of Land Management policy to offer lands, the surface of which is administered by another agency, only after leasing recommendations or, when statutorily required, consent or lack of objection and stipulation requirements have been rendered from the surface managing agency. The proposed provision is adopted without change in the final rulemaking.

Other comments suggested that specific language should be added in the final rulemaking to clarify the requirements for consent for Forest Service administered lands. The comments have been adopted in the final rulemaking and a new paragraph (c) is added to address lands reserved from the public domain as well as acquired lands administered by the Forest Service.

Several comments expressed concern about the effect of inaction by the Forest Service on requests for leasing. Some comments suggested that the Bureau of Land Management publish a list of lands "withdrawn" from leasing due to Forest Service nonconsent. This suggestion has not been adopted by the final rulemaking since it is Bureau policy to offer only those lands for which consent, as required by law, and stipulation requirements have been received from the surface managing agency. The Forest Service is required to respond favorably or to object to leasing requests from the authorized officer of BLM, based on Forest management plans. The information in these plans is available to the public. The public also may request information from the U.S. Forest Service directly.

One comment suggested that the final rulemaking combine the proposed § 3101.7-1(a) and (b) into one paragraph and expressed the view that the criteria for agency consent for leasing public domain and acquired lands minerals now appear to be the same. This recommendation has not been adopted in the final rulemaking, because new paragraph (c) in the final rulemaking has added further clarification. Accordingly, the applicability of these regulations to

agencies other than the Forest Service, with respect to recommendations to lease public domain minerals, also is clarified.

Several comments recommended that surface managing agency consent and stipulations submitted to the Bureau for sale parcels should be binding on the surface managing agency for the 2-year noncompetitive period as well. The comments expressed the view that such a requirement would eliminate repeated reviews of leasing proposals by the surface managing agency during this brief period when surface conditions likely would not change. This recommendation has not been adopted by the final rulemaking because changing environmental conditions may require modification of stipulations and/or reaffirmation of the consent to lease at some later time within the 2-year period prior to the issuance of a noncompetitive lease. Moreover, the Bureau cannot impose such a binding requirement on any other surface managing agency. In practice, however, a change in consent or stipulations is not likely to occur immediately after a lease sale.

Section 3101.7-2 Action by the Bureau of Land Management.

This section received only a few comments. One comment suggested that this section should more clearly reflect the role of Bureau of Land Management in the leasing of National Forest System lands in light of the expanded role provided the Forest Service in the Reform Act. Another comment suggested that the Bureau should not be involved in the management of Forest Service lands. The Bureau cannot abrogate its legal responsibility for the final discretionary authority for issuance of leases. The comments have not been adopted in the final rulemaking.

Section 3101.7-3 Appeals.

Several of the comments received on this section of the proposed rulemaking supported the process of appealing decisions of the surface managing agency directly to that agency (particularly with respect to the U.S. Forest Service) for decisions made by that agency objecting to leasing, refusing to lease, or consenting to leasing only with stipulations. However, some comments expressed the view that appeals should be handled cooperatively between the Department of the Interior and the Forest Service, or that only one agency should be designated to handle appeals to avoid dual appeal processes or the "stacking" of appeals first to the Forest Service and then to the Interior Board of Land

Appeals. One comment suggested that the final rulemaking clarify which appeals are required to be made to the Forest Service. After consideration of all of the comments, the section is amended in the final rulemaking to clarify those instances when appeals are properly made to the surface managing agency.

Section 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

One comment objected to the 30-day period allowed State or charitable organizations to formulate stipulations under this section of the proposed rulemaking. In response to this comment, this section in the final rulemaking has been modified to bring it into conformance with the coordination procedures used for lands under the jurisdiction of a surface managing agency other than the Bureau.

Section 3102.1 Who may hold leases.

One comment suggested that § 3102.1(b) of the proposed rulemaking unnecessarily repeats the information contained in § 3102.5-1. The comment expressed the view that the purpose of § 3102.1 has always been to furnish a qualifications listing of those persons or entities who are authorized to hold leases in accordance with section 1 of the Mineral Leasing Act, and that paragraph (b) of the proposed rulemaking does not fall within this category. The comment is adopted in the final rulemaking and paragraph (b) has been removed.

Section 3102.4 Signature.

One comment noted that this section of the existing regulations should be amended to remove reference to former Subpart 3112. The final rulemaking published in the *Federal Register* on May 16, 1988 (53 FR 17340), made this revision.

Section 3102.5-1 Compliance.

A large number of comments were received on this section of the proposed rulemaking. A few comments expressed concern that companies, associations, partnerships, etc., could not be responsible for all of their partners' or potential partners' actions in complying with the requirements of this section, and, consequently, would be faced with cancellation of leases if a violation occurred. The statute itself establishes the requirement. To be in compliance with section 1 of the Mineral Leasing Act (30 U.S.C. 181), it is necessary that all associations of companies, individuals, etc., ensure that their members are complying with the requirements of the law. The

introductory paragraph of § 3102.5-1 of the proposed rulemaking has been adopted without change.

Another comment on this section suggested that the final rulemaking add a provision to allow the authorized officer to request information relative to compliance at any time. This suggestion has not been adopted because the Bureau of Land Management has the authority to require this information when necessary under § 3102.5-3 of the final rulemaking published on May 16, 1988 (53 FR 17340).

One comment suggested § 3102.5-1 of the final rulemaking should include the provision that submission of an offer to lease or a request for approval of an assignment constitutes certification of compliance with the regulations. This provision is included in § 3102.5-2 in the final rulemaking published on May 16, 1988 (53 FR 17340). Therefore, no change is necessary in this final rulemaking.

Several comments requested that § 3102.5-1(e) be modified to indicate that a party is determined to be in noncompliance with the Reform Act beginning on the date of the final decision of imposition of a civil penalty. As discussed earlier in this preamble at § 3000.9, the interpretation of section 41 of the Act is required to be made by the Department of Justice. Section 3102.5-1(e) is adopted in the final rulemaking without amendment.

Several comments suggested that a definition of "control" be added in § 3102.5-1(f) of the final rulemaking. These comments have merit and the final rulemaking adds a cross-reference to the definition contained in § 3400.0-5(rr) of the existing regulations. This definition, promulgated to comply with the section 2(a)(2)(A) requirements of the Federal Coal Leasing Amendments Act, 30 U.S.C. 201(a)(2)(A), meets the requirements of section 5102(d) of the Reform Act as well.

A number of comments on § 3102.5-1(f) of the proposed rulemaking questioned cancellation of a lease while an administrative or judicial appeal is pending. Since there also is an appeal provision in conjunction with a lease cancellation decision, no change has been made in the final rulemaking. Notwithstanding the concerns expressed in several comments that there may be a genuine dispute concerning either the adequacy of the reclamation performed or the civil penalty imposed, as well as a potential for invalidation of leases or transfers entered into subsequent to the failure or refusal to perform reclamation work properly, these measures are necessary to ensure compliance with section 17(g) of the Mineral Leasing Act,

and disputes can be resolved upon appeal of the cancellation.

Several comments expressed concern that the beginning of the noncompliance period for section 17(g) of the Act, as stated in § 3102.5-1(f) of the proposed rulemaking, could be interpreted as being at two different times. The final rulemaking has been amended to indicate that noncompliance shall begin on whichever date occurs first, either the date of imposition of a civil penalty or the date of attachment of a bond and that noncompliance shall end when the United States has been reimbursed for all costs incurred as a result of the specific infraction.

In response to several comments, a new § 3102.5-1(g) is added in the final rulemaking to provide a cross-reference to redesignated § 3106.1(b) of the final rulemaking, which specifies that signature on a request for approval of a record title assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) shall certify that the assignment would further the development of oil and gas. However, the Bureau may request further evidence of compliance with the provision of the Reform Act.

Section 3102.6 Agents.

Several comments on this section of the proposed rulemaking recommended that it be either clarified or removed. Most of the comments stated that it was not advantageous to corporations or entities to execute special agency agreements solely for persons attending and bidding at lease sales who assist and execute documents on behalf of a firm. One comment felt this section of the proposed rulemaking constituted a Government intrusion into the conduct of business of the private sector. This section has been removed in the final rulemaking. Section 3102.5-3 of the final rulemaking published on May 16, 1988, gives the Bureau sufficient authority to request further evidence and to review any necessary documents to determine compliance.

Section 3103.1-1 Form of remittance.

Several comments requested that this section of the final rulemaking include sight drafts. U.S. Department of the Treasury requirements prohibit the acceptance of sight drafts by any Federal agency for payments of obligations. Therefore, the final rulemaking does not include sight drafts as a form of remittance.

Several comments were received concerning the use of credit cards since no provisions for such are currently in place. The Government presently is negotiating the provisions that would in

the future allow the use of credit cards for receipt of payments. The final rulemaking would allow the use of this type of payment when it is authorized and specific procedures have been developed and announced to the public.

Two comments on this section of the proposed rulemaking addressed the fact that cash was not included as an acceptable form of remittance in the proposed rulemaking. The final rulemaking does not allow remittance of cash because it is administratively difficult to monitor and handle for security reasons, particularly at competitive sales.

A few comments requested that the Bureau of Land Management be more flexible with regard to the required description of "payable to" on remittances to avoid frivolous lawsuits on technical grounds. The rulemaking identifies the correct payee name to be used for all remittances. However, any remittances made out to "BLM," "DOI," or "Bureau of Land Management" are accepted as payment and no problems have been encountered.

Section 3103.2-1 Rental requirements.

One comment on this section of the proposed rulemaking suggested that the statement in the preamble of the proposed rulemaking that the requirement that nominations and bids be accompanied by the first year's rental to ensure "serious" bids was unlikely to have any bearing on how serious bids are apt to be and, in fact, might diminish ultimate revenues available for bidding. The final rulemaking has not been changed because submission of these moneys is a measure of bidder intent, and a nomination or bid must be accompanied by the rental to allow prompt lease issuance.

Several comments suggested that allowing only 10 calendar days for curing a deficient rental in § 3103.2-1(b) of the proposed rulemaking was too short and unreasonable. One comment pointed out that the proposed rule language did not specify that the 10-calendar day period does not begin until receipt by the applicant of a notice of the deficiency. This section of the final rulemaking is amended to clarify the provision and to allow 15 calendar days from receipt of a deficiency notice.

Another comment on § 3103.2-1(b) suggested that the Bureau allow correction of errors made "in good faith." Aside from the judgmental factors involved and the creation of undue dispute, not all types of defects can be considered curable with no loss of priority, but instead must be treated on a case-by-case basis. The final

rulemaking has not been amended to include this suggestion.

Several comments suggested that § 3103.2-1 of the proposed rulemaking be revised to require rental on a net acre basis instead of a gross acre basis. Section 3103.2-1(c) of the existing regulations, which was not a part of the proposed rulemaking and has been in existence for many years, requires that rentals not be prorated for undivided fractional interest lands but be payable for the full acreage in such lands. The Government charges the rental for the acreage in which it owns an interest, whether it be the entire interest or less. The comments have been considered, but no change has been made in the final rulemaking. Moreover, because of the wide variation in the fractional interest that may be held in certain lands and the difficulty of administering leases with varying mineral interest lands, it is necessary to require rental on the full acreage.

Section 3103.2-2 Annual rental payments.

One comment recommended the § 3103.2-2(i) of the existing regulations be retained in the final rulemaking. Retention of this section is not necessary because the final rulemaking provides for rental provisions "as stated in the lease". The recommendation is not adopted in the final rulemaking. Another comment suggested that the final rulemaking specify in § 3103.2-2 that rentals should not be increased for leases extended beyond their fifth year by drilling or production. Since the Reform Act requires that the rental shall not be less than \$2 after the fifth year, this suggestion has not been adopted in the final rulemaking.

A few comments on § 3103.2-2(b) of the proposed rulemaking suggested that, to comply with the law, the phrase "application" as well as "offer" be included in this section and that it be reformatted in the same manner as paragraph (a) of the section to make it clearer. These suggestions have been adopted in the final rulemaking with regard to those leases "grandfathered" by the Reform Act.

Several comments were received on § 3103.2-2(b)(1) of the proposed rulemaking. One comment expressed strong concern that this section would double the annual rental rate beginning in the sixth year for leases issued under former Subpart 3112 because the final rulemaking was viewed to end the rental rate reduction from \$3 to \$1 per acre previously granted by the Secretary of the Interior. The comment was concerned that this increase would

discourage exploration. Because the proposed rulemaking merely applies the rental rate set by the Reform Act to leases issued under former Subpart 3112 (and would lower the present regulated rate from \$3 to \$2 per acre), this comment has not been adopted by the final rulemaking. The Secretary of the Interior would continue to have the authority and discretion to grant a rental rate reduction in accordance with section 39 of the Mineral Leasing Act.

Another comment on § 3103.2-2(b)(1) of the proposed rulemaking suggested that the date cited should be changed to that date when the rental increase provision actually will become effective because of the Secretary's granting a rental reduction until February 1, 1989. In response to this comment, the final rulemaking specifies the date that leases issued under former Subpart 3112 after February 19, 1982, become subject to the annual rental increase in the sixth and subsequent lease years of \$2 per acre or fraction thereof.

A few comments on § 3103.2-2(b)(2) of the proposed rulemaking suggested removing the known geological structure and favorable petroleum geological province terminology. No change has been made in the final rulemaking because these two terms must continue to be recognized for all leases issued in accordance with the regulations in effect on or before December 22, 1987.

Several comments were received on § 3103.2-2(c) of the proposed rulemaking. The comments questioned the payment both of annual rental and royalty on leases assessed compensatory royalty. Most of the comments argued that the 1959 Solicitor's Opinion is in error since the compensatory royalties compensate the Department of the Interior as if the production has occurred. The comments also suggested that such double charges are inequitable and could result in termination of the lease. The Department has reviewed the issues raised by the comments. However, based on the Solicitor's Opinion, which remains in force, it is clear that both rental and royalty are due in this situation. Rental is due until a discovery is made on the lease. By paying compensatory royalty in lieu of drilling, the lessee in effect has also opted to continue rental payments. The final rulemaking makes no change in this provision.

One comment received on § 3103.2-2(d) of the proposed rulemaking pointed out a discrepancy between this section and § 3103.2-3 of the existing regulations. This suggestion has been adopted and § 3103.2-2(d) of the final rulemaking has been modified to

indicate that the \$5 rental rate is due beginning with the termination date of the lease. Section 3103.2-2(e) also has been modified in the final rulemaking to clarify when the \$10 annual rental rate is required for reinstated competitive leases.

Section 3103.3-1 Royalty on production.

Numerous comments were received on this section of the proposed rulemaking. The majority of comments supported the 12½ percent fixed royalty rate in § 3103.3-1(a)(1), expressing the view that this flat rate would promote drilling on marginal lands, generate higher bonus bids, and would be easier to administer.

Some of the comments, however, pointed out that Congress did not alter the competitive royalty rate when it enacted the Reform Act. Since 1920, section 17 of the Mineral Leasing Act has provided that the royalty rate for competitive oil and gas leases shall be "not less than 12½ percent." Some of the comments suggested that this discretionary provision must be implemented today as it was in the past; that is, that the discretion is illusory. This provision of the law has been implemented in the past by delegating to the authorized officer the discretion to prescribe the royalty rate in the Notice of Competitive Lease Sale. While the Bureau's authorized officers in the past have prescribed a Bureau standard form rate schedule based on the rate of production, the existing oil and gas leasing regulations have not required this. The competitive oil and gas royalty rate has been interpreted in the same manner as the coal royalty rate in section 7(a) of the Act as added by the Federal Coal Leasing Amendments Act, that is, while the royalty rate cannot be lower than 12½ percent, it does not, by law, have to be higher.

A review of recent revenues from producing oil and gas leases indicates that approximately 12 percent of the producing lease accounts (3,114 of 24,109) administered by the Minerals Management Service are variable royalty rate leases. The impact of the variable royalty leases, however, is insignificant because, in calendar year 1987, of almost \$1 billion in royalty revenues received from leases only \$5,528,658 was derived from the portion of royalty above 12½ percent from those leases with a variable royalty rate schedule. This is much less than 1 percent of the royalty revenues received. Since 50 percent of the lease revenues go to the States, and 40 percent goes to the Reclamation Fund, only \$552,865 from royalty revenues remains for the

Government to administer the inspection program for all Federal leases and to determine whether well production figures are being properly allocated. The flat rate simplifies this complex task. In addition, higher royalty rates on competitive leases may direct more activity toward the noncompetitive leasing program in which leases, by statute, have a primary term of 10 years with a fixed 12½ percent royalty rate. The Reform Act's deemphasis of the noncompetitive leasing program through increased incentives in competitive leasing activity is preferable and in the public interest in accordance with the provisions of the Reform Act.

The Bureau is mindful of the comments expressing concern with the adoption in this final rulemaking of a fixed royalty rate of 12½ percent and will continue to study this matter. Various suggestions that have been made and may be considered for future use by the Bureau include rate differentials based on the existence or level of production within a geographic area, or a different flat rate royalty such as a 16⅓ percent royalty in lieu of the 12½ percent royalty rate. The Department of the Interior will continue to consider alternatives from all sources. In the course of considering any further change in the regulations with respect to the royalty rates, public comment will be sought.

Several comments on § 3103.3-1(a) (2) and (3) of the proposed rulemaking expressed the view that the royalty rate should not be increased when leases are reinstated. The Mineral Leasing Act requires increased royalty for leases reinstated under the Class II procedures. The Interior Board of Land Appeals has held that Congress intended a penalty provision to apply to reinstated leases. The final rulemaking adopts the proposed language with no change.

A number of comments noted the typographical error in § 3103.3-1(b) of the proposed rulemaking. The final rulemaking corrects the word "quality" to read "qualify."

Section 3103.3-2 Minimum royalties.

Several comments were received on this section of the proposed rulemaking. One comment suggested retaining the language of the existing regulation at the end of paragraph (a) that requires payment of the difference if the actual royalty paid during any year is less than \$1 per acre. The final rulemaking clearly specifies under paragraph (a)(1) that a minimum of \$1 per acre is payable. In addition, the lease terms contain this language. No change has been made and the final rulemaking is adopted as

proposed. A few comments suggested that the final rulemaking should specify that the lessee receive notification from the authorized officer that the lease is subject to minimum royalty. Royalty is paid to the Minerals Management Service, and it determines whether sufficient royalties are paid to meet the minimum royalty due. The final rulemaking adopts the proposed rulemaking with no change.

Section 3104.1 Bond obligations.

Several comments were received on this section. Some of the comments suggested that the time for requiring bond coverage should not be limited to the commencement of surface disturbing activities related to drilling, but should start at the beginning of any surface disturbing activities. A few of the comments indicated that any surface disturbing activities related to any aspects of lease development should require bonding. The first sentence of § 3104.1(a) of the proposed rulemaking revised the existing regulation to change the time when a bond is required: From the commencement of surface disturbing activities related to drilling operations rather than from the commencement of drilling operations. Lease operations are conducted in accordance with the operations and surface use activities contained in the approved Application for Permit to Drill. The language of the proposed rulemaking, which is adopted in the final rulemaking, will ensure that any surface disturbing activities requiring reclamation will be bonded. No entity may undertake any surface disturbance requiring reclamation, such as road construction, without an approved permit to drill. Building roads on Federal surface without approval would result in trespass proceedings. No change is made in this section of the final rulemaking.

Another comment on § 3104.1(a) of the proposed rulemaking recommended that holders of operating rights (sublessees) be removed as parties who may furnish bonding coverage since the current Bureau of Land Management adjudication procedures for handling operating rights transfer approvals would make it difficult to accept bonds from those parties without extensive title review. No change is made in the final rulemaking since any party furnishing bond coverage has the burden and responsibility to the Bureau for the lease activities being conducted.

One comment on § 3104.1(c) of the proposed rulemaking questioned the elimination of the acceptance of cash for a personal bond. Cash is eliminated as an acceptable personal bond because of guidelines from the Federal Reserve

Board as well as Bureau field office concerns about security problems in accepting and handling large sums of cash. Potential obligors should be capable of converting cash easily into either a cashier's or certified check or a certificate of deposit, all of which are acceptable forms of personal bonding.

Several comments commended the proposed expansion of types of acceptable personal bonds in § 3104.1(c) to include certificates of deposit and letters of credit. One comment indicated that this provision would greatly assist operators in obtaining the guarantees needed for reclamation work required for disturbed areas. A few comments were adverse to the acceptance of letters of credit and expressed the view that such letters of credit would be inadequate to ensure that the Bureau would be able to recover damages after the expiration of any fixed term of the letter of credit. The comments suggested that the specific term of a letter of credit could easily result in inadequate coverage after the term expired and would be difficult to manage. However, other Federal agencies accept letters of credit without difficulties. Accordingly, in the final rulemaking letters of credit are an acceptable form of security for a personal bond.

Another comment recommended that only letters of credit with an indefinite term be considered acceptable to accommodate leases that become indefinite in duration upon completion of a producing well. The final rulemaking is modified to require that letters of credit shall include language requiring automatic renewal for one-year periods in the absence of specific notice to the proper BLM office at least 90 days prior to the expiration date of the letter of credit or prior to the intent not to renew. Other changes adopted in this section of the final rulemaking make it consistent with that contained in 30 CFR 800.21(b), which contains requirements used by the Office of Surface Mining for letters of credit. A final comment recommended that letters of credit should be issued by Federally insured institutions in the same manner as certificates of deposit. This suggestion has been adopted in the final rulemaking.

One comment received on § 3104.1 of the proposed rulemaking expressed concern that operators may be required to furnish bonds to both the Bureau of Land Management and the Forest Service for the same lease obligation. The commenter requested that the Bureau and Forest Service provide a means whereby a single statewide or nationwide bond would cover

compliance with all lease terms and the reclamation requirements of both surface agencies. The Department of the Interior is committed to not requiring duplicate bonding coverage whenever possible, and will coordinate with the Department of Agriculture in implementing each agency's respective responsibilities under the Reform Act. The Bureau of Land Management will continue to be the official office of record for accepting and maintaining bonds associated with Federal oil and gas leases and operations thereon. The Bureau, in accordance with the interagency agreement with the Forest Service, also would consider any Forest Service recommendations to increase bond coverage as may be required by § 3104.5. Final determination as to the method by which the Secretary of Agriculture implements his/her responsibilities under the Reform Act, however, will be made by that Secretary. Accordingly, no change has been made in the final rulemaking.

Another comment on § 3104.1 of the proposed rulemaking requested that the final rulemaking implement the Bureau of Land Management Director's Task Force recommendation that "piggybacking" of Federal and State bond requirements be permitted in order to preclude unnecessary duplicate coverage for reclamation requirements. The final rulemaking provides the minimum requirements acceptable to the Department of the Interior. Any implementation of the concept of allowing coverage for both Federal and State concerns related to development of oil and gas leases can be addressed only through individual agreements between the Bureau and the State concerned. The Bureau would favor such alternate bonding proposals for any State that would desire to pursue such arrangements, provided that both parties needs are met, but cannot make such commitments at this time.

For consistency with the bonding provisions contained in § 3104.1(a), the bonding requirements for geothermal resources leasing contained in § 3206.1-1 also are amended in this final rulemaking.

Section 3104.2 Lease bond.

Two comments received on § 3104.2 of the proposed rulemaking recommended that holders of operating rights (sublessees) be eliminated as parties who may furnish lease bonds. No change is made in the final rulemaking since the party furnishing bond coverage has the responsibility for activities related to lease development and

reclamation, and a holder of operating rights may be such a party.

A few comments on this section also requested that the final rulemaking add specific provisions to allow phased release of bonds when reclamation has progressed to a point where continuation of the full bond amount is no longer necessary. Since current Bureau policy allows phased release of bonds in the manner recommended no amendment is needed in the final rulemaking. Nothing in the rulemaking prohibits reducing bond amounts through a phased release as special conditions may warrant.

One comment suggested that § 3104.2 be modified to require attachment of any operator's bond before attaching a lessee's bond. This recommendation is not adopted in the final rulemaking since a default in performing any lease obligation must leave the Government in a position to pursue all possible options to remedy the situation. Lessees remain free to pursue other civil remedies against non-performing operators.

A few comments requested that the last sentence of § 3104.2 of the proposed rulemaking be clarified to specify what documentation is required in order for an operator to use a lessee's or sublessee's bond. This suggestion is adopted and the final rulemaking has been clarified. The specific documentation usually required is a consent from the surety to include the operator under the coverage of the lessee's or sublessee's bond.

Section 3104.4 Unit operator's bond.

Two comments on this section of the proposed rulemaking suggested elimination of the duplication of § 3104.4 and Subpart 3184. This suggestion has been adopted in the final rulemaking by the removal of Subpart 3184. Two comments recommended revisions to simplify and clarify the language in § 3104.4. In response to these comments, the final rulemaking revises this section and removes § 3184.1. For consistency, the final rulemaking also removes § 3184.1 concerning geothermal resources unit bonds, and adds a new § 3206.6 containing revised language consistent with the provisions in amended § 3104.4.

Section 3104.5 Increased amount of bonds.

Several comments on § 3104.5(a) of the proposed rulemaking expressed concern that requiring a bond in the full amount of the estimated costs of plugging the well and reclaiming the involved disturbed area, if any demand for payment has occurred within the past 5 years, is too stringent. Another

comment suggested that increasing bond levels to an adequate amount only after an operator has failed to fulfill lease obligations is not a responsible Bureau practice. Some comments recommended that the 5-year period should be prospective and not retrospective to events preceding this rulemaking, and that the authorized officer should have the discretion not to increase the bond amount. The Reform Act requires the Secretary of the Interior to ensure that adequate bond coverage is provided. An operator's refusal to plug a well or reclaim the surface is a serious breach of the regulations that casts doubt on the integrity of that operator. Therefore, in such circumstances a very firm uniform national policy is appropriate.

Another comment on this section of the proposed rulemaking suggested that the bond coverage for full reclamation be required in all cases. The Reform Act does not require such a bond, but does require the Secretary to ensure that bonding is adequate. The regulation language accomplishes the requirement of the law and the proposed rulemaking is adopted with only minor technical changes.

Two comments on this section also recommended that the authorized officer be able to increase bonding for any actions other than an Application for Permit to Drill. Section 3104.5(b) provides this authority.

Some of the comments received on § 3104.5(b) of the proposed rulemaking noted that a notice received from the Minerals Management Service that there may be uncollected royalties due would be grounds for the bond amount to be increased even if such a notice is later determined to be incorrect with no final determination occurring. The Bureau agrees with these comments, and the final rulemaking is modified to indicate that such a notice from the Service must have determined that uncollected royalties are due prior to requiring any increased bond amount for such infraction.

Several comments on § 3104.5 expressed the view that the provisions of this section should not be applied during the pendency of an appeal. The payment under a bond would not be required until a decision is rendered under any administrative appeal taken and when all such appeal rights have also been exhausted. The Bureau would not expect payments to be made prior to that time.

Section 3106.1 Transfers, general.

Numerous comments were received on § 3106.1 concerning approval of assignments and transfers. Many of the comments addressed the first two

sentences of § 3106.1(a) of the proposed rulemaking. Many comments raised the point that the proposed rulemaking did not provide for discretionary approval of record title assignments for separate zones or parts of legal subdivisions. The Bureau's experience with these types of assignments is that they are never approved. In order to avoid implying that these types of assignments may be approved, the final rulemaking specifies that the Secretary is exercising his or her discretionary authority, under the statute and this rulemaking, to disapprove such record title assignments. The option for lessees to execute transfers of non-record title interests is unaffected and is believed sufficient for the conduct of business.

The language in § 3106.1(a) of the proposed rulemaking was incorrect as to the difference between the terms "transfer," "assignment," and "sublease." Transfers include both assignments and subleases. An assignment refers only to a transfer of record title interest, and a sublease refers to a transfer of operating rights interests. The definition of the term "transfer" in § 3100.0-5(e) of the final rulemaking published on May 16, 1988 (53 FR 17340), clarifies use of these terms. The approval requirements in § 3106.1(a) of this rulemaking relate to assignments of separate zones or deposits and parts of legal subdivisions, not to subleases. Subleases of operating rights interests may be disapproved only for lack of bonding or qualifications of transferees.

A few commenters expressed the view that the intent of the Reform Act allowing the Secretary discretion to disapprove assignments of less than 640 acres (2,560 acres in Alaska) was to eliminate the activities of "forty-acre merchants" who subdivide leases with no intent to develop. The commenters felt that the discretionary authority should be exercised in such a way as not to unduly inconvenience legitimate operators when assignments resulting from farmouts, spacing unit restrictions, options, etc., would further development. One comment suggested that the authorized officer should normally assume that the assignment was legitimate and would further the development of oil and gas, absent evidence to the contrary. This suggestion has been adopted in the final rulemaking with creation of a new paragraph (b), which establishes that execution and submission of the request for approval of an assignment will certify that the assignment will further the development of oil and gas. In addition, in accordance with the

provisions in § 3102.5-3 of the May 16, 1988, final rulemaking, the authorized officer may require additional information and statements, from both the assignor and assignee, where there is any question whether the assignment will further the development of oil and gas.

Some of the comments suggested that the standards that would constitute "to further the development of oil and gas" be specified in the final rulemaking, if only by example. Another comment took an opposite position, recommending broad discretion on the part of the authorized officer. Given inclusion in the final rulemaking of the provision for self-certification that assignment will lead to development, described above, and recognizing the wide variety of legitimate reasons for making assignments, it has been determined that the purposes of the Act could be best carried out by leaving unspecified the standards that would be applied to determine whether a particular assignment would further development. This will afford the authorized officer the greatest latitude for approval of assignments.

Many comments suggested that the final rulemaking include a specific requirement, echoing the Reform Act, that, except when the assignment is determined not to be in accordance with applicable law, approval of the assignment be required within 60 days of receipt of the request for approval. This suggestion is not adopted in the final rulemaking. The requirement is specified in the Act, and no purpose would be served by repeating the requirement in rulemaking. The Bureau of Land Management State Offices are committed to act in a timely manner on all assignments and transfers in accordance with this requirement of the Reform Act.

Sections 3107.2-2 Cessation of production.

A number of comments were received on § 3107.2-2 concerning the additional language added in the proposed rulemaking to clarify the 60-day period for reworking a well upon cessation of production. Most of the comments expressed the view that the added language would eliminate uncertainty and misinterpretation. A few comments, however, requested that the authorized officer be allowed discretion to waive the 60-day period. The Mineral Leasing Act (30 U.S.C. 226(i)) requires the 60-day period. The final rulemaking, therefore, has adopted the language of the proposed rulemaking without change.

Section 3107.2-3 Leases capable of production.

Several comments received on § 3107.2-3 of the proposed rulemaking suggested that the final rulemaking be amended to provide discretion to the authorized officer due to the current depressed price of oil. An application for a suspension of production and/or operations is the appropriate vehicle for seeking relief in these situations. Another comment on this section expressed the view that a lease capable of production should not terminate due to a failure to produce from a shut-in well. This would be true unless the authorized officer orders the lease into production. Accordingly, the proposed rulemaking is adopted without change.

Section 3107.7 Exchange leases—20-year term.

Section 3107.8 Renewal leases.

Several comments expressed concern that the proposed rulemaking required a greater obligation by applicants for exchange and renewal leases under §§ 3107.7, 3107.8-1(a) and 3107.8-3(a) to show compliance with reclamation requirements than is required under § 3102.5-1(f). The comments suggested that reference to certification of compliance under § 3102.5-1 sufficiently includes compliance with reclamation standards. The final rulemaking adopts this suggestion.

A few comments suggested removal from § 3107.8-1(a) of the final rulemaking of the requirement that sublessees be required to join in applications for renewals of leases, because ownership of operating rights is no longer adjudicated as part of the Bureau's approval process. This suggestion is valid and the requirement has been removed in the final rulemaking.

Several comments objected to the requirement in § 3107.8-1(a) of the proposed rulemaking for applicants seeking renewal of a lease to show that all moneys due to the United States have been paid. This requirement does not represent any change from the requirement contained in the existing regulations. Such a showing by applicants has been routinely made in the application by including a statement that all moneys due have been paid. This requirement has not presented any problem to date and has been routinely complied with by those holding rights to renewal leases. Accordingly, no change is made in the final rulemaking.

Section 3108.1 Relinquishments.

Several comments received on this section of the proposed rulemaking

requested clarification of the use of the term "suspension." While this term remains unchanged from that contained in the existing regulations, a technical amendment is made in this section of the final rulemaking to clarify that a suspension relates to an authorized shut-in of a well.

Section 3108.3 Cancellation.

One comment received on § 3108.3(a) of the proposed rulemaking objected to the provision allowing cancellation of a nonproducing lease for failure to comply with any provisions of the law, indicating that such notice would be insufficient. This comment has not been adopted in the final rulemaking since this provision is consistent with the language of the Mineral Leasing Act, both prior to and subsequent to the enactment of the Reform Act. The proposed rulemaking spells out the specific requirements of the law that had previously been incorporated only by reference in § 3108.3(a) of the existing regulations. Paragraph (a) of this section is adopted with only a technical change to refer specifically to section 31(b) of the Mineral Leasing Act.

Another comment on this section contended that the proposed revision broadened the powers of the Bureau for cancellation by court proceedings of a lease without a productive well. The distinction between administrative and judicial cancellation prior to enactment of the Reform Act was based on whether the leased lands were known to contain valuable deposits of oil or gas. The Reform Act changed the provision to make no distinction concerning whether a lease contains a well capable of production. The statutory language in the Reform Act encompasses both actual and allocated production by providing protection to communized and unitized leases. The comment is not adopted in the final rulemaking since the Reform Act clearly changes the requirements for administrative cancellation. As a practical matter, any cancellation proceeding will generate the due process rights for any affected lessee to appeal to the Interior Board of Land Appeals and subsequent judicial review. Thus, no lease cancellation would become final without judicial review so long as the lessee pursues his or her rights.

Another comment on this section of the proposed rulemaking objected that a lease may be subject to cancellation if a partner or co-lessee has acquired an interest in the lease in violation of section 17(g) of the Mineral Leasing Act, which prohibits issuance of a lease or approval of a lease assignment to any

party not in compliance with the reclamation requirements after due notice. Section 3102.5-1 clearly meets the intent of the Reform Act to prevent improper acquisition of lease interests by a party through lease issuance, assignment, or sublease in violation of reclamation requirements. However, the lease interest of an innocent co-lessee in such a situation would not be subject to cancellation. The final rulemaking does not adopt this comment.

As a result of the Bureau's review of the comments on § 3108.3, and a review of the language of the proposed rulemaking and the cancellation provisions of the law, it has been determined that the proposed rulemaking did not clearly implement the Secretary of the Interior's oil and gas lease cancellation authority. The final rulemaking has, therefore, been revised by adding a separate paragraph setting out the administrative cancellation authority in section 31(b) of the Mineral Leasing Act (30 U.S.C. 188(b)), as amended by the Reform Act, for breach of the lease, another paragraph setting out the judicial cancellation authority in section 31(a) of that Act (30 U.S.C. 188(a)), for breach of the lease, and a separate paragraph setting out the judicial cancellation and divestiture authority in section 27(h)(1) of that Act (30 U.S.C. 184(h)(1)), for interests held in violation of the Act.

Section 3109.2 Units of the National Park System.

A comment requested a technical change in this section of the existing regulations to revise the terminology relating to leasing requirements in National Park areas in order to be consistent with the amendments made in § 3100.0-3(g)(4) and those previously made in § 3100.0-3 (a)(2) and (b)(2) of the final rulemaking of May 16, 1988 (53 FR 17340). This suggestion is adopted in the final rulemaking.

Part 3110—Noncompetitive Leases

Section 3110.1 Lands available for noncompetitive offer and lease.

Section 3110.2 Priority.

Many comments were received on §§ 3110.1 and 3110.2 of the proposed rulemaking. The comments addressed three primary issues: Whether a noncompetitive offer can be filed prior to a competitive sale and retain priority in the event the parcel is not competitively sold; the nature of the postsale noncompetitive process; and the period, if any, during which offers are considered simultaneously filed after the competitive process.

Comments were received on all sides of these questions and represented a broad spectrum of opinion regarding the nature of the noncompetitive process under the Reform Act. One group of comments emphasized the postsale simultaneous aspect; another group emphasized the desire for presale noncompetitive filings leading to a priority standing that could be maintained in the event the parcel is not sold competitively; and a third group emphasized the pre-eminence of the competitive program over the noncompetitive leasing process. A few comments strongly supported presale parcel priority, and an almost equal number of comments opposed it. Numerous comments addressed the length of the "simultaneous" filing period following the competitive offering. Several comments wanted one day, and an equal number of comments requested a period from 10 to 30 days, and others expressed a desire for 5 days. In addition, there were a few comments that suggested elimination of the postsale noncompetitive process altogether, recommending the substitution of either another competitive sale using noncompetitive lease terms or the recycling of any parcels which received multiple noncompetitive offers directly back into the competitive system. One comment suggested a return to the former automated simultaneous oil and gas leasing system, the lottery.

Several comments concerned the posting of results of noncompetitive offers, an issue that also is pertinent to the nature of the postsale process. Some comments requested that results be posted, but others suggested that results not be posted. The issues raised by many of these comments can be resolved by looking at the intent of the legislation. Clearly the legislation is designed to emphasize the competitive process. In fact, the Congress has confirmed this emphasis and restated its desire to depart from the former simultaneous leasing process and to de-emphasize noncompetitive leasing. The Bureau is persuaded by the test sales, and the comments that have been received, that the competitive oral auction is an efficient and desirable method of leasing the public's onshore oil and gas resources.

The legislation also is clearly designed to provide a noncompetitive reward for risk-taking in frontier areas. This concept rewards exploration activity rather than rewarding success at a game of chance.

To the extent that the noncompetitive choices are between a simultaneous

program based on chance that only rewards speculation and a program that rewards risk-taking based on exploration, it is clear that the intent of the legislation is toward the latter. It is vital, also, to recognize that the former simultaneous leasing process was not a creation of Congress, and that the former process was not confirmed in any way by the Reform Act. Rather, the simultaneous process had been instituted solely by regulation and was conducted for administrative convenience due to conditions that existed in the late 1950's. It is the intent of the Bureau that the regulations implementing the Reform Act follow these guidelines: emphasis on competitive rather than noncompetitive leasing, and emphasis on a noncompetitive reward for risk-taking in frontier areas rather than risk-taking in a game of chance.

The Bureau of Land Management has taken certain steps in § 3110.2 of the final rulemaking to minimize the role of postsale simultaneous filings, and particularly to deinstitutionalize the process. First, a period of a single day is specified, immediately following the end of the competitive process, in which offers will be considered simultaneously filed. Since business and office hours vary somewhat from Bureau office to office, the times of day will be specified in each Notice of Competitive Lease Sale or List of Lands Available for Competitive Nomination. In furtherance of the idea that the simultaneous period is not special, relative to the following or subsequent days after this single day, but rather is simply a period in which many offers are expected, the Bureau has made a deliberate decision to not publish and provide results for that period.

In response to numerous comments, the Bureau has amended the final rulemaking in § 3110.2(a) to provide that offers received after the one-day simultaneous period shall be prioritized as of the time received, rather than as of the day received. This system predates the former simultaneous system, has always been used for previous over-the-counter offers, and is the Bureau's normal practice of doing business. As such, the provisions do not provide any special status to any class of noncompetitive offer.

Several comments expressed the view that the Bureau should maintain the proscription in former Subpart 3112 against multiple filings for the same parcel by the same individual or individuals with a common interest. The proposed rulemaking was silent on this matter. The final rulemaking also is

intentionally silent. Enforcement of the proscription was one of the hallmarks of the former simultaneous program, and because of its complexities, proved to be a major source of litigation and a great drain on public resources. The Reform Act was intended to remove the more valuable lands from the noncompetitive arena, thereby leaving far less concern regarding multiple filings. Because circumstances have changed, the Bureau is no longer persuaded that costly enforcement of the multiple-filing rules is in the public interest.

All noncompetitive offers, whether filed before or after the competitive offering, have the same requirements, including the same terms, configuration, acreage requirements, and costs, that is, submission with the offer of the first year's rental of \$1.50 per acre and a nonrefundable \$75 filing fee. The final rulemaking continues the 10,240-acre maximum limit, a ten-year term, and other configuration requirements contained in § 3110.3-3. If the lands are sold competitively, competitive lease terms will apply, with the noncompetitive offer rejected and the rental submitted refunded.

Beginning on January 3, 1989, § 3110.1 of the final rulemaking provides that all unleased lands will be available for noncompetitive lease offer prior to their competitive offering, with two exceptions. Lands in terminated, expired, relinquished, or canceled leases will not be available for the filing of a noncompetitive offer until one year from the date of lease termination, expiration, cancellation, or relinquishment and also from the date of posting of a nomination or sale notice until the lands have been through the competitive offering without receiving a nomination or a bid, as appropriate.

The public shall take notice that under § 3110.1(a)(1) noncompetitive filings prior to a competitive auction will not be permitted until after January 2, 1989. It should be clearly understood that all lands still must be subjected to competition before being leased. An offer filed for lands prior to those lands being posted in a List of Lands Available for Competitive Nominations or a Notice of Sale will trigger processing of the lands to determine availability and stipulations, the placement of the parcel in the competitive sale process and, failing its receiving a bid, leasing it to the priority offeror. Priority will be established as of the day the offer was properly filed and will have seniority over subsequent offers, including any offers filed following the sale.

Many comments dealt with ambiguities regarding when lands would

be available for filing of noncompetitive lease offers following competition. The final rulemaking is amended in § 3110.1 to make it clear that lands are available noncompetitively the first business day after the sale, or where formal nominations are used the first business day after the posting of the Notice of Competitive Lease Sale. Other comments objected that the term, "bid," is imprecise, preferring the phrase "bid less than the national minimum". The term is defined in § 3000.0-5(k) of this final rulemaking, and there is no need to redefine it.

There were several comments and questions on § 3110.2(a), which dealt with offers filed between December 22, 1987, and the promulgation of this final rulemaking. Some comments questioned the meaning of the phrase "lands then available for noncompetitive leasing." Others maintained that, prior to the promulgation of final regulations, no lands were available for noncompetitive filing. No distinction is now made in the final rulemaking between offers filed between the date of the Reform Act and this final rulemaking, and noncompetitive offers filed after January 2, 1989, and prior to the competitive offering of such lands. Regular noncompetitive offers had been routinely accepted for filing with priority up to the date of the Reform Act, and the Act did not prohibit the filing of such offers, but required that all lands including those contained in such filings be first exposed to competition. The Bureau made no attempt to halt such filings and, under statute, has exposed them to competition, issuing competitive leases where a bid was received and issuing a noncompetitive lease to the priority filer when no bid was received. The public should note that these filings will not be accepted between June 12, 1988, and January 2, 1989, to provide all parties adequate notice to this provision in the final rulemaking. Offers filed before June 12, 1988, will receive priority and, unless a competitive bid is received for such lands, a noncompetitive lease will be issued to the priority filer, all else being regular.

Numerous comments were received on § 3110.2(b) of the proposed rulemaking. The reference to priority as of the time of filing, remains in the final rulemaking. However, the meaning of the term "noncompetitive offers" is broadened in the final rulemaking to include offers for all available lands outside the competitive sale process.

The two sentences in § 3110.2(b) of the proposed rulemaking referring to conflicting offers have been revised in this final rulemaking to specify that the

period in which all offers will be considered simultaneously filed is the single business day following an oral auction or following the posting of a Notice of Competitive Lease Sale when formal nominations are used. Offers received on subsequent days shall receive priority as of the time of filing, e.g., an offer filed at 10:15 a.m. will have priority over an offer filed at 10:16 a.m.

The last sentence of § 3110.2(b) of the proposed rulemaking has been modified to specify that offers will not be available for public inspection the day they are filed, but the final rulemaking is purposely silent as to when after that time such offers are available for public review. This change is necessary because of the large volume of offers which may be received on that day. While it is the Bureau's policy to make public records available as soon as practicable, it is not appropriate to specify a certain time for availability which could conflict with the orderly processing of such offers. Many comments expressed the need for confidentiality of offerors prior to an auction. As a matter of practicality, offerors have many means to accomplish anonymity.

Several comments on § 3110.2(c) of the proposed rulemaking questioned the concept of allowing noncompetitive offers pursuant to an opening order. In the final rulemaking, lands in an opening order or other notice may be available for noncompetitive offer depending on their status vis-a-vis the competitive process. Section 3110.2(c) of the proposed rulemaking is, therefore, retained and revised as § 3110.1(a)(2) in the final rulemaking to cover such special situations.

Section 3110.2(d) of the proposed rulemaking led to a great deal of confusion as indicated in several comments. The proposed language referred only to simultaneous applications received under former Subpart 3112. The provision is designed to address and handle a quirk in that former program whereby an application was drawn in priority, the lease offer was refused (rejected), and a reselection of another priority applicant was made. For many parcels, this process has been repeated endlessly resulting in much wasted effort with no lease yet issued. The Bureau is still executing cyclical reselections for simultaneous parcels first drawn in 1983, and has hundreds of such lease parcels, through late 1987, which have not been accepted by an applicant for lease issuance. The proposed rule was designed to allow one more reselection cycle after the effective date of this final rulemaking for

each such "unclaimed" parcel, after which all remaining applications are to be considered rejected without further notice. Rentals for these applications were refunded long ago. The provision will not apply to over-the-counter offers that were made subsequent to enactment of the Reform Act and those offers that are filed under this final rulemaking. Accordingly, this provision is amended to clarify the provision and is redesignated in the final rulemaking as § 3110.2(b).

Section 3110.3-1 Duration of lease.

One comment on this section of the proposed rulemaking concerning the length of the primary term for competitive and noncompetitive leases suggested a 10-year competitive term and 5-year noncompetitive term. Another comment suggested keeping the primary term for noncompetitive leases at 10 years but requiring a well to hold the lease beyond 5 years. The final rulemaking has not adopted these suggestions since the lease terms are clearly established by law.

Section 3110.3-2 Dating of leases.

Some comments suggested that the proposed rulemaking overlooked the requirement for lease issuance within 60 days of the date the first qualified applicant is identified, and recommended that this be included in the final rulemaking. The time period is specified in the Reform Act, and does not need to be repeated in regulations. The final rulemaking does not adopt this suggestion. The Bureau, however, is committed to act in a timely manner on all lease actions to meet this requirement of the Reform Act.

Section 3110.3-3 Lease offer size.

Several comments were received on § 3110.3-3 of the proposed rulemaking. Most comments favored the minimum size specified in the proposed rulemaking for a public domain lease offer, and commended the retention of the maximum size of 10,240 acres within a 6-mile square. One comment, however, suggested allowing an offer for less than 640 acres or 1 full section, whichever is less, rather than whichever is larger. This comment recommended that since some irregular sections are less than 640 acres, the final rulemaking should indicate that a lease offer may be made on all Federal lands available in a section. Another comment stated that the provision in the proposed rulemaking that an offer may include less than all available lands in a section if the offer exceeds the minimum 640-acre provision contradicts the first sentence within the same paragraph.

The final rulemaking does not adopt these two comments. The intent of the rule is to promote efficient resource development by requiring leases to be formed in reasonably large, compact blocks. If an irregular section contains more than 640 acres, the offer must include the entire section, thus, the requirement in the rule of "larger" rather than "less". If the section of land is less than 640 acres, any contiguous available lands must be included, unless the offer contains other available lands which bring the lease offer to at least 640 acres.

Another comment on § 3110.3-3(a) of the proposed rulemaking suggested that the exception to the 640-acre minimum requirement for noncompetitive offers filed on a parcel offered by the Bureau in a competitive lease sale should be limited to the time period when the description by parcel number is required under § 3110.8-1 of the proposed rulemaking, which is redesignated § 3110.5-1. This suggestion is adopted in the final rulemaking, and this exception is moved to the end of paragraph (a) of § 3110.3-3 for clarity.

Section 3110.4 Requirements for offer.

A Bureau of Land Management review of §§ 3110.4, 3110.5, 3110.6, 3110.7, and 3110.8 of the proposed rulemaking recognized that these sections were not in the appropriate order to follow the logical sequence of actions when a noncompetitive offer is filed. The final rulemaking is amended to place the sections required in this subpart in the correct order of events.

Section 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, received several comments expressing the view that the word "shall" in the first sentence seems to require use of the current lease form. The comments suggested that this requirement conflicts with § 3110.5(d) of the proposed rulemaking, redesignated as § 3110.7(e) in the final rulemaking, in which a form not currently in use shall be allowed, unless such lease form has been declared obsolete by the Director prior to the filing. This suggestion is not adopted in the final rulemaking. The Bureau is completing revisions to the lease form to conform to the requirements of the Reform Act. The revised lease form is expected to be available for public use soon after this final rulemaking is published. Until the revised lease form is available, and sufficient time has been allowed for general circulation, existing lease forms will be acceptable for filing noncompetitive lease offers. The Bureau will publish a notice in the *Federal Register* (anticipated in July 1988)

specifying the acceptable lease form and will give interested parties a reasonable time period in which to obtain them before declaring the previous lease form obsolete. The provision relating to the lease form in paragraph (d) in § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking, is revised and placed in a new paragraph (e), but certain language is retained in the final rulemaking in the event that future modifications or changes to the lease form are necessary.

One comment on § 3110.7 of the proposed rulemaking, redesignated § 3110.4 in the final rulemaking, suggested that in order to save paperwork only one original lease form should be required as opposed to the requirement of an original and 2 copies. This recommendation is not adopted in the final rulemaking. Each offer to lease may eventually mature into a lease. Accordingly, an original and 2 copies of the offer are necessary to provide sufficient copies for the lessor, the lessee, and the surface managing agency.

Another comment on this section recommended that the phrase "or attorney-in-fact" be added after the term "authorized agent" in paragraph (a). This suggestion is not adopted since an attorney-in-fact is an agent.

A few other comments on paragraph (a) of this section of the proposed rulemaking suggested that the phrase "by a nonrefundable application fee of \$75 and the first year's rental" be clarified. The commenters expressed the view that the language as proposed implies that the first year's rental is nonrefundable. It was not intended that noncompetitive rentals would be subject to forfeiture. The final rulemaking has been modified to make this clear.

Several comments requested clarification or correction of references to §§ 3103.2-1(a) and 3103.3-3(c) in § 3110.7(b) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(b). The reference to § 3103.2-1(a) is correct. Offers deficient in the first year's rental by not more than 10 percent or \$200, whichever is less, shall be acceptable. The reference in the proposed rulemaking to § 3103.3-3(c) was incorrect, and is corrected in the final rulemaking to specify § 3110.3-3(c), which addresses curable defects of an offer that exceeds the 10,240-acre maximum size by not more than 160 acres. No loss in priority to an offer to lease would occur in these two instances, provided that the requirements are satisfied within the time allowed in these regulations.

Several comments on this section raised questions concerning the provision for a correction of an offer to lease. One comment requested clarification as to what circumstances would prompt the authorized officer to request a correction to an offer. Another comment stated that correction of an offer is a very broad notion, and that not all corrections should result in a new priority date being set as of the date the correction has been made. The effect of corrections on the amount of filing fees required also was questioned. The intent of the regulation is to allow correction of minor errors in an offer, if there is no intervening offer, which otherwise would cause a rejection of the offer. Curable defects with no loss in priority will be allowed only in those instances specified in §§ 3103.2-1(a) and 3110.3-3(c) of the final rulemaking. No new filing fee would be required if the offer is acceptable with the corrections made.

Several comments objected to the provision in § 3110.7(e) of the proposed rulemaking, redesignated in the final rulemaking as § 3110.4(e), which requires that all offers to lease should name the United States agency from which consent to the issuance of a lease shall be obtained. The comments suggested that the Bureau can more easily identify the surface managing agency. The Bureau recognizes that this identification may create some burden to offerors. However, where title information for the mineral interest is uncertain on Bureau records and a title abstract is needed, identification of the surface managing agency expedites processing of lease offers. The Bureau will continue to request this information for lands nominated through filing of a noncompetitive offer or an informal expression of interest prior to inclusion of the lands in a competitive offering. Inclusion of the information on the lease form is not mandatory for a noncompetitive offer and will not result in a loss of priority. The language of the proposed rulemaking is adopted without change.

Section 3110.5 Description of lands in offer.

A large number of comments was received on § 3110.8-1 of the proposed rulemaking, redesignated § 3110.5-1 in the final rulemaking, concerning the requirement that applicants making noncompetitive offers during the month of the noncompetitive process be required to describe the lands only by a single parcel number as it appeared in the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale. One comment pointed out that the "and"

requirement would be impossible to meet where the direct sale method is used and there is no List of Lands Available for Competitive Nominations. Additionally, the comments suggested that if the parcel numbers were not the same on both the List of Lands Available for Competitive Nominations and the Notice of Competitive Lease Sale, even more confusion could result. The final rulemaking corrects this defect in this section, redesignated as § 3110.5-1, to indicate that the parcel number to be used will be that number as specified in the notice or list. When the nomination process is used, internal Bureau procedure will require that the same parcel number appearing on a nominations list also must be used on the corresponding Notice of Competitive Lease Sale.

Other comments on this section objected to the phrase, "the end of the month of the competitive process." The Bureau concurs that this terminology is ambiguous. The final rulemaking has been amended to specify that the period required for use of the parcel number (the parcel number period) in submitting lease offers commences on the day following the oral auction, or where formal nominations are used, the day following the posting of the sale notice, until the end of that same month.

Several comments on this section also questioned the rationale for limiting the noncompetitive offer to a single parcel or for requiring that those offers filed within the parcel number period must retain the configuration contained in the nomination lists and sale notices that offered the lands competitively. The Bureau adopts this restriction in anticipation that some parcels may pass through the competitive process without a bid but still may be attractive enough to invite several noncompetitive offers. Retaining the parcel configuration, and limiting the offer to a single parcel, will prevent overlapping and partial offers, and allow the Bureau to adjudicate conflicting offers on the same parcel more quickly. Additionally, this requirement will obviate the need to obtain revised stipulations to fit a different lease parcel configuration, thus removing a possible impediment to lease issuance.

One comment on this section of the proposed rulemaking suggested that the final regulation should be flexible enough to allow lease offers on the basis of the parcel number description throughout the two years the lands are available noncompetitively following the competitive offering. The comment recommended that offerors also should be able to rely on the acreage figure

associated with the parcel as indicated in the listing. Another comment contended that the parcel number description requirement should be required for the entire 2-year period. A few comments supported limiting the parcel number period to a single day or other extremely brief period. These suggestions are not adopted in the final rulemaking since such a provision would permanently prevent a potential offeror from acquiring only the land configuration he or she might desire in a single lease. Such a requirement could also create confusion in the later stages of the 2-year period of availability of the lands for noncompetitive leasing, since parcel numbers could become numerous following several sale processes. After the required period, the lands in the offer shall be properly described; use of the parcel number by itself will result in rejection of the offer.

Section 3110.8-3 of the proposed rulemaking, redesignated in the final rulemaking as § 3110.5-3, received several comments suggesting deletion of paragraph (e) allowing the authorized officer to waive the land description requirements, stating that it duplicates paragraph (d). Another comment opposed the provision allowing an acquisition tract number in lieu of a legal description because it would complicate the Bureau's automated lands and minerals record system. This provision of the proposed rulemaking was designed to allow the offeror the greatest possible flexibility in clearly and accurately describing lands covered by an offer without loss of priority. The final rulemaking removes paragraph (e) of the proposed rulemaking and redesignates paragraph (f) of the proposed rulemaking as paragraph (e). Redesignated § 3110.5-3(d) is amended to state clearly that the authorized officer may allow the description by acquisition or tract number without any other legal land description required by this section.

Section 3110.6 Withdrawal of offer.

Section 3110.4 of the proposed rulemaking, redesignated as § 3110.6 in the final rulemaking, received several comments that opposed the prohibition of withdrawal of a noncompetitive lease offer earlier than 60 days following its filing. On balance, the reasons for imposing the limitations on withdrawal of an offer filed on lands available after the competitive process outweigh the disadvantages of such a limitation. Experience has shown that offers are treated by some as an "option" on a lease during which time efforts are made to sell it to a third party. When such

efforts fail, the offer is then withdrawn. This practice, although not widespread in the industry, has the effect of encouraging offers filed in less than good faith, and keeps legitimate developers from acquiring available lands as prospects. A 60-day prohibition on withdrawal maximizes the lands available, facilitates orderly issuance of leases, and ensures that the public's resources are spent in furtherance of leasing rather than in aiding lease speculation.

Some comments suggested that allowing withdrawals of offers would speed refunds when a lease is issued to the senior offeror. Junior offers are rejected by the Bureau at the time the senior offeror is issued the lease, and rental refunds are authorized as soon as a lease issues. Allowing such withdrawals would not speed this process but would merely add an unnecessary paperwork burden. When unexpected delays, such as litigation, prevent timely lease issuance, the offer could be withdrawn after the 60 days. The final rulemaking retains the 60-day limitation on withdrawal of offers made in accordance with § 3110.1(b) of the final rulemaking on those lands available during the 2-year period following the end of the competitive offering. In such an offer is withdrawn, the lands would continue to be available for noncompetitive leasing for the remainder of the 2-year period under § 3110.1(b).

A few comments on this section of the proposed rulemaking suggested that the phrase specifying withdrawal "at least 60 days after the date of filing" in this section of the proposed rulemaking was unclear. In response to these comments, the final rulemaking is amended to state that such a withdrawal is allowed only after 60 days from the date of filing of such an offer.

A few comments received on this section of the proposed rulemaking suggested that if noncompetitive offers are allowed to be filed as a means of establishing priority before the competitive offering of the lands, that the offeror should be allowed to withdraw the offer prior to the competitive offering if the stipulations are found to be unacceptable to the offeror. The comment further contended that such offerors should be notified of the stipulations prior to inclusion of the lands in the Notice of Competitive Lease Sale, and that if the stipulations are unacceptable, the lands should not be placed on the sale list or notice. Notification of any stipulations for the lands in such an offer filed prior to the competitive offering is inappropriate

and unnecessary. Since the Reform Act places greater emphasis on the competitive offering of lease parcels, all members of the public should be advised of the terms and conditions through the normal competitive procedures for conducting competitive sales. However, this section and § 3101.1-3 have been amended in the final rulemaking to allow for the withdrawal of an offer filed prior to the competitive process, if at any time prior to lease issuance, the offeror finds that the stipulations would be unacceptable. Unlike offers filed under § 3110.1(b), those offers filed prior to the competitive offering would not be affected by the 60-day limitation for withdrawal provided that the withdrawal is made prior to lease issuance.

Section 3110.7 Action on offer.

A number of comments were received on § 3110.5 of the proposed rulemaking, redesignated as § 3110.7 in the final rulemaking. Most comments suggested that paragraph (b), as well as the reference in paragraph (a) to extensions, petitions for reinstatements, and existing or former leases, be removed from this section and placed in Subpart 3120, because it would take at least 90 days for the lands to progress through the competitive process and become available for noncompetitive leasing. The comments contended that such matters as lease reinstatements and extensions should be resolved before offering the lands competitively. It is unlikely that a noncompetitive lease could be issued in such a short time frame, and that reinstatements and extensions should normally be resolved prior to competitive offering of the lands. However, no change is made in these paragraphs in the final rulemaking since the possibility does exist that a recently terminated lease could be offered competitively, receive no bids, and then be available for noncompetitive offer. In view of these comments, § 3120.5-3 of the final rulemaking also has been amended to include this same provision.

Another comment on this section suggested that paragraph (a) be clarified to specify that if a lease is issued for lands included in a terminated lease before a petition for reinstatement is filed, the subsequent lease shall not be canceled. This suggestion is not adopted in the final rulemaking because the regulations provide for cancellation of a lease that should not have been issued. The last sentence of paragraph (a) sufficiently states that the subsequent lease will be canceled if the petitioner is entitled to reinstatement. If the petition is filed after a lease is issued,

reinstatement of the prior lease cannot be made.

Several comments on this section suggested that the word "erroneously" be inserted in paragraph (a) to make it clear that leases will not be indiscriminately issued before the necessary paperwork is completed. The comments contended that unless an error is made, a lease should not be issued until final action is taken on all previous offers or leases. The final rulemaking does not adopt this suggestion because it is unnecessary to specify the reason the lease was issued. The intent of this provision is to require cancellation if the lease should not have been issued.

Section 3110.9 Future interest offers.

One comment received on §§ 3110.9-1 and 3120.7 of the proposed rulemaking suggested that the question of competitive and noncompetitive leasing of future interests be addressed by further specific legislation. This comment is beyond the scope of this rulemaking since these final regulations must implement the statute now in effect. Another comment on § 3110.9 of the proposed rulemaking questioned whether a future interest could be leased noncompetitively without first going through the competitive process, and requested clarification of the meaning of the phrase "substantially all of the present operating rights in the lands," suggesting "substantially all" means 50 percent or more and that "lands" could mean future interest lands or all lands in a communitized area.

Under the Reform Act, future interest lands may be leased both competitively and noncompetitively. Since no lease may be issued under the Reform Act without first being subjected to the competitive process, the present interest holder may gain the sole right to a lease with a successful competitive bid over any noncompetitive applicant whose offer is nullified by the competitive bid. Accordingly, the provision limiting leasing noncompetitively only to one who owns "all or substantially all" is removed in §§ 3110.9-1 and 3110.9-2 of the final rulemaking.

A few comments questioned the meaning of the phrase, "the same type and proportion," in § 3110.9-4(a) of the proposed rulemaking. The language is sufficiently clear in the proposed rulemaking that a transfer of a present interest, either record title or operating rights, generates a concurrent transfer of the future interest. No change is made in the final rulemaking.

Part 3120—Competitive Leases

Section 3120.1-1 *Lands available for competitive leasing.*

Several comments addressed the term "available" in § 3120.1-1 of the proposed rulemaking. One comment suggested a change to clarify the term, expressing concern that the Bureau would offer all available lands whether or not it would be in the public interest to lease and prior to compliance with National Environmental Policy Act requirements. Another comment questioned whether the Bureau could retain the option to withhold tracts. One comment suggested a provision be included requiring the Bureau to offer *all* available lands for competitive leasing within 18 months from their date of availability. Other comments expressed concern as to how unleased lands (those available over-the-counter prior to enactment of the Reform Act and those newly available due to a change in status or the law) could be cycled through the competitive process.

The term "available" means any lands subject to leasing under the Mineral Leasing Act. As used in the context of this section, all such lands are required to be offered competitively. It is Bureau policy prior to offering the lands to determine whether leasing will be in the public interest and to identify stipulation requirements, obtain surface management agency leasing recommendations and consent where applicable and required by law. Since these requirements are required to be met and an identification and copy of the stipulations applicable to each parcel is to be included in the Notice of Competitive Lease Sale, it would be virtually impossible to offer *all* available lands within 18 months. Also, far more lands are and always have been available than have been leased. Moreover, many if not most lands will not be "offered" by the Bureau but are nonetheless available for filing or expressions of interest. Offering unleased lands for cycling through the competitive process is discussed under Subpart 3110 regarding opening orders in special situations for newly available lands. The final rulemaking expands the categories of available lands in this section to include lands for which an offer or expression of interest has been received by the proper BLM office, and lands included by Bureau motion.

A few comments on § 3120.1-1(c) of the proposed rulemaking suggested that when an undivided interest in a lease is canceled, the regulations should include a provision requiring the Bureau to offer to the other holders of interest in that lease a right of first refusal to purchase

that interest in an amount equal to the highest bid received at the oral auction or the opportunity to exceed such highest acceptable bid. Offering the right of first refusal is contrary to the competitive intent of the law. Other interest holders would have the opportunity at the sale to exceed the highest bid. The suggestions is not adopted in the final rulemaking.

One comment alleged that § 3120.1-1(d) of the proposed rulemaking allowed leasing within units of the National Park System without consent. This is not the case since this paragraph states only that lands subject to drainage are available for competitive leasing.

Another comment concerning § 3120.1-1(d) suggested that a definition of "protective leasing" be included in this subpart. The suggestion is not adopted as this subject is properly addressed in § 3100.2.

Section 3120.1-2 *Requirements.*

Several comments on this section of the proposed rulemaking expressed concern about the scheduling of the sale dates, suggesting that the dates not overlap among the Bureau State Offices. It is Bureau policy to plan sale dates on a non-conflicting basis. Sale notices will give those parties wishing to participate an ample amount of time to make plans to attend the oral auctions. Depending on the availability of lands and individual State Office workloads, the sales normally will be scheduled bi-monthly by some State Offices and at least quarterly by other State offices. Where a State Office has few lands available, rather than delaying offering them, it may include these parcels in nearby State Office sales.

Several comments on this section questioned whether oral auctions are required to be held in the States where the available lands are located. The Reform Act allows the Bureau to hold sales in any State where the office has jurisdiction over the lands. The final rulemaking amends this section to make this clear.

A number of comments on § 3120.1-2(c) of the proposed rulemaking recommended that the national minimum acceptable bid be prorated on a net-acre basis rather than on a gross-acre basis. The Bureau has no evidence of Congressional intent to permit proration of bonus bids. Bidders will be made aware of the percentage of Federal mineral interest held in the lands in order to adjust their bids accordingly. Administratively, proration is cumbersome. The recommendation has not been adopted in the final rulemaking.

Section 3120.1-3 *Protests and appeals.*

One comment of this section of the proposed rulemaking requested that the final rulemaking clarify the provisions for suspension of a lease sale when a protest or appeal is received. The final rulemaking amends this section to specify that only the Assistant Secretary for Land and Minerals Management may suspend a sale for good and just cause after reviewing the reason(s) for such action.

Other comments on this section recommended that, in order to preclude indefinite suspension, specific limitation (e.g., 30 days) should be imposed on the length of time that a parcel can be suspended from competitive sale. Such a time frame is not feasible because the Department cannot determine in advance when the grounds for suspension of any parcel would be resolved.

Section 3120.2-1 *Duration of leases.*

Several comments addressed the primary term of competitive and noncompetitive leases and requested varying changes in this section of the final rulemaking. Since the Reform Act did not change this provision of the Mineral Leasing Act, there is no need to amend this section.

Section 3120.2-3 *Lease size.*

Varying comments were received on this section of the proposed rulemaking concerning lease size. A few of the comments requested that the lease size continue to be no larger than 640 acres. After consideration of these comments, it has been determined that the final rulemaking should allow discretion to decide how much acreage should be included in each lease parcel, up to the maximum 2,560 acres specified in the Reform Act. Expressions of interest from industry, the extent of lands available within a particular area, and the goal of parcels having compact form, will be considered by the Bureau in configuring parcels. The final rulemaking adopts the language of the proposed rulemaking without change.

Section 3120.3 *Nomination process.*

Section 3120.3-1 *General.*

A large number of comments was received on the type of sale method to be used by the Bureau: The nomination method or the direct sale method. The comments were essentially evenly divided between both methods. The majority of the comments did recommend that the Bureau choose a consistent method nationwide to lessen confusion and assist industry planning.

Several comments questioned the legality of the formal nomination process and expressed the view that this method does not comply with the Reform Act. The Department has considered all the views presented and remains convinced that the nomination process is legally consistent with the Reform Act. Considering the Bureau's experience with the test sales, the variations apparent in the oil and gas leasing activities nationwide, and the many comments received, it is appropriate that Subpart 3120 of the final rulemaking should allow regulatory flexibility to permit the use of either sale method should conditions warrant in the future. The final rulemaking, under § 3120.3, vests in the Director of the Bureau of Land Management and authority to implement the formal nomination process or permit expressions of interest following a public comment period of at least 30 days. This final rulemaking completes the 30-day comment period, and based on the many comments received with regard to expressions of interest (informal nominations) as well as formal nominations, effective with the publication of this final rulemaking, the Director elects to permit informal expressions of interest to be submitted to the proper BLM office, but declines at this time to employ formal nominations under § 3120.3.

All Bureau of Land Management State Offices, at this time, will use the direct sale method. The public hereby is invited to submit informal expressions of interest for available lands by land description to the proper BLM office for processing by Bureau personnel for inclusion in future oral auctions. The identity of filers of expressions of interest will be kept confidential. No specific form or format is required to submit an informal expression of interest.

Several comments suggested inclusion in the final rulemaking of a provision to allow a person who has submitted an informal expression of interest the opportunity to appeal if the Bureau withdraws a parcel from competitive sale. This suggestion to make a Bureau action to withdraw a parcel an appealable decision has not been adopted. In most instances, parcels are withdrawn from sale only for critical reasons, such as lack of surface managing agency consent, title questions, or restrictive stipulations that would cloud title or restrict lease issuance. When a parcel is withdrawn due to errors or factors that are irreconcilable in the requisite time

frame, the parcel may be reoffered in a future competitive offering.

In response to several comments pointing out that §§ 3120.3-1 and 3120.3-2(d) of the proposed rulemaking appear to be in conflict, the final rulemaking is amended to clarify that formal nominations require submission of the national minimum acceptable bid.

Section 3120.3-2 Filing of a nomination for competitive leasing.

Numerous comments requested that nominations submitted to the Bureau be kept confidential. If and when this sale method is elected by the Director following a public comment period, confidentiality is anticipated to be provided. The Bureau has determined that confidentiality is both desirable and permissible as part of this sale method.

Section 3120.3-3 Minimum bid and rental remittance.

A few comments requested that a nomination with a deficient payment not result in the elimination of the nominated parcel from the sale. The final rulemaking does not adopt this suggestion due to the confusion that would be caused in ascertaining whether the nomination is valid. The final rulemaking is amended in this section and in § 3120.3-2 to provide for refund of all moneys in instances where nominations are unacceptable.

Section 3120.3-4 Withdrawal of a nomination.

Several comments objected to this section of the proposed rulemaking, which disallowed withdrawal of nominations. Any party submitting the minimum national acceptable bid should be required to accept a lease under the terms specified in the List of Lands Available for Competitive Nominations if that party is the sole nominator and bidder, provided no higher bid is received at the oral auction. High bidders at a sale also are required to accept the lease. Withdrawal of a parcel by the Bureau of Land Management is discussed earlier in this preamble under § 3120.3. If the formal nomination process is implemented in the future, and a parcel is withdrawn by the Bureau, all moneys submitted with the nomination will be refunded. The final rulemaking is amended accordingly.

Section 3120.3-7 Refund.

A number of comments on this section of the proposed rulemaking requested that the Bureau of Land Management be required to refund the amounts tendered by unsuccessful nominators in a timely fashion. Specific time periods suggested by commenters ranged from 30 to 60

days following the oral auction. Some of the comments suggested payment of interest to nominators for the time that the funds are held by the Bureau. The Bureau is without authority to pay interest on such funds. It is Bureau policy to refund unearned funds as promptly as possible consistent with limitations imposed by the U.S. Department of the Treasury. Currently, refunds may not be authorized until 30 days following the receipt of a remittance to prevent dispersal of funds when a remittance subsequently may be dishonored. The Bureau will continue its policy of issuing such refunds as promptly as possible, but such a provision is not necessary in the final rulemaking.

Section 3120.4 Notice of competitive lease sale.

Section 3120.4-1 General.

Several comments expressed the view that this section of the proposed rulemaking was inadequate since it failed to require inclusion in a Notice of Competitive Lease Sale of such items as bidding and payment requirements, lease terms and stipulations, surface managing agency information, and other helpful details. The comments have been considered and certain amendments are incorporated in the final rulemaking to require that the sale notice contain the identification and language of the applicable stipulation(s) for each parcel. As a matter of policy and internal Bureau procedure, the notice generally will contain bidding and payment requirements. However, it is unnecessary to include a high level of detail in this section of the final rulemaking.

Section 3120.4-2 Posting of notice.

A few comments on this section of the proposed rulemaking requested that the Bureau of Land Management prepare an affidavit, setting forth the date of posting of the Notice of Competitive Lease Sale in the proper BLM office, and the date the sale notice is made available to the surface managing agency. Such a process is unnecessary. Affidavits, statements, etc., prepared by the authorized officer swearing that the Bureau has complied with the law would be of no value to a lessee should questions on this procedure ever be raised. The final rulemaking does not adopt these comments.

Another comment on this section of the proposed rulemaking questioned the posting of maps in the surface managing agency's office. The Reform Act requires a map or a narrative description of the affected lands to be posted in the

appropriate office of the leasing and land management agencies. Since all Bureau offices use a narrative description, at a minimum, in sale notices and also have tract books or land plats available that depict leased and unleased lands, there is no need for additional language to be added to this section of the final rulemaking. The comment has not been adopted in the final rulemaking.

Section 3120.5 Competitive sale.

Section 3120.5-1 Oral auction.

One general comment on this section of the proposed rulemaking suggested slower-paced sales to accommodate all bidders, and requested Bureau reconsideration of the use of "rapid fire" auctioneers. The Bureau of Land Management will not regulate the process, allowing Bureau State Offices to use familiar local practice to facilitate the oral auction.

Another comment on this section suggested that the final rulemaking allow mail-in bids prior to the oral auction to accommodate those people not able to be present at the oral auction. This suggestion is not adopted, since the Reform Act does not allow consideration of sealed bids.

Some comments on this section suggested that all bidders should be registered. Another comment recommended that confidential bidding numbers be assigned. Based on the test sales, it has been determined that this practice need not be regulated. The proposed rule language is adopted without change in the final rulemaking.

Many of the comments on paragraph (a) of this section of the proposed rulemaking favored bidding on a per-acre basis rather than on a per-parcel basis. However, it has been determined that a flexible posture on this issue is appropriate and a specific practice will not be required. This will allow Bureau State Offices to utilize either method, depending on the standard practices normally used within the area of each office's jurisdiction. No change is made in the final rulemaking.

Several comments objected to the announcement at the oral auction of nominations accompanied by the national minimum acceptable bid. The concern raised by the comments was that announcement of the names of nominators at the oral auction could influence bidding or nonbidding by other parties. The final rulemaking is amended to provide that only the existence of a nomination will be announced at the oral auction in order to establish the base bidding level for a parcel above which oral bidding must

commence. The name of the nominator would not be revealed as no purpose would be served by doing so.

Several comments suggested that § 3120.5-1(c) of the proposed rulemaking was confusing as to the treatment of parcels receiving 2 or more bids with one comment expressing the view that a parcel should be offered at the next competitive sale and that any noncompetitive offer previously filed should retain its priority through the next sale. The final rulemaking has been amended to clarify that this section applies only when multiple nominations result in tie bids for a parcel under the formal nomination process. Such bids will be returned (not rejected) with all moneys refunded to the nominators. Any parcel receiving such multiple nominations when no higher bid is made at the oral auction will be reoffered in a future competitive sale. Additionally, a pending noncompetitive offer filed under § 3110.1(a) for the same parcel in this situation would retain priority if no bids are received for the parcel in a subsequent auction.

Section 3120.5-2 Payments required.

Several comments suggested that the phrase "close of official business hours" in § 3120.5-2(b) of the proposed rulemaking be more specifically defined. This provision in the rule is intended to require that all specified payments for each parcel be made on the same day the parcel is sold. The final rulemaking is amended to allow administrative flexibility to accept payment after official business hours on the same day the parcel is sold in the event that the oral auction extends late, after the normal business time has passed.

Numerous comments expressed dissatisfaction with § 3120.5-2(b)(1) of the proposed rulemaking concerning the payment requirement of 20 percent of the bonus bid on the day of the sale. The comments stated that the \$2 national minimum acceptable bid based on acreage is a known amount prior to the sale, allowing checks to be prepared prior to the sale, but that the 20 percent figure, same as the total bonus bid amount, is an unknown. One comment suggested no payment be required on the day of the sale. A few comments recommended requiring payment of the full bonus bid on the day of the sale. In response to these comments, consideration was given to the merits of requiring either the full bonus bid amount or the \$2 minimum bonus bid on the day of the sale. It has been decided to require only the \$2 minimum bonus bid per acre or fraction thereof at the oral auction. The final rulemaking has been amended accordingly. If

experience at future oral auctions finds that payment of the balance of the bonus bid fails to be remitted in a timely manner within 10 working days following the last day of the auction, a future rulemaking will be considered to require 100 percent of bonus payments at the oral auction, similar to requirements now made by some State governments.

Some comments addressed the requirement in § 3120.5-2(b)(3) of the proposed rulemaking regarding fees covering administrative costs, arguing that Congress did not intend that a filing fee be charged in a competitive sale process. The Reform Act does not support this contention. The administrative fee is charged to help defray the costs of the sale and replaces the charge for the proportionate share of the publication costs previously required in the existing regulations. The final rulemaking adopts the proposed rulemaking without change.

A few comments were directed to § 3120.5-2(c) of the proposed rulemaking. Some commenters suggested that the time allowed to submit the balance of the bonus bid after the sale should be extended to 15 days instead of 10 days. The Departmental decision to require only the \$2 national minimum acceptable bonus bid on the day of the sale rather than the total bonus was partially based on the understanding that the balance of the bonus bid must be received within 10 working days. This shorter time frame will allow interest revenues to accrue to the U.S. Treasury more rapidly, in conformance with a General Accounting Office (GAO) 1985 study concerning loss of such revenues. The GAO study recommended that the Bureau of Land Management reduce the time frame in which bonus bid balance moneys are required to be remitted. No change is made in the final rulemaking. Other comments on this section of the proposed rulemaking suggested that a new paragraph be added either in this section or in § 3120.5-3(a) to avoid forcing a potential lessee to take a parcel if the stipulations or terms were modified after posting of the parcel on a list or notice. Such a lease parcel modification would require the Bureau to reoffer the parcel due to the Reform Act's notice requirement for modifications of lease terms, so that the suggested change is unnecessary.

Section 3120.5-3 Award of lease.

Some comments suggested revising the phrase "high bidder" to "lessee" in the second sentence of § 3120.5-3(a), because it is the lessee who is

responsible for certifying compliance. For purposes of awarding the lease, the terms high bidder and lessee are considered synonymous. The proposed rulemaking is adopted without change.

A few comments suggested that a bid should be binding and supported a penalty for failure to honor a bid. Another comment, however, questioned the right of the Government to retain the first year's rental when a lease never issues and, further, whether a bidder could be deemed liable as well, under any circumstances, for the balance of the bonus bid. A bid is binding and does commit the bidder to payment of the full bonus amount. This provision as well as retention of the minimum bonus bid, the first year's rental and the administrative fee should deter irresponsible bidders.

Several comments on § 3120.5-3(b) of the proposed rulemaking pointed out that the Reform Act requires that competitive leases be issued within 60 days from the date of the sale. The comments requested that this requirement be specified in the final rulemaking. The recommendation is not adopted. The Bureau is committed to adhere to the time frame required by the Reform Act, and no purpose is served by repeating the requirement in the final rulemaking.

A few comments requested that the final rulemaking clarify whether lands will be reoffered competitively if a bid is rejected, and further questioned whether, in such circumstances, a noncompetitive offer filed prior to the competitive process would retain its priority. The final rulemaking adopts the comments and also provides that such a noncompetitive offer will retain priority, provided no bid is received in a subsequent oral auction that would nullify the offer.

Section 3120.6 Parcels not bid on at auction.

A technical amendment is made in the title of this section in the final rulemaking more properly to describe the procedures that are addressed in this section.

Numerous comments were received on this section of the proposed rulemaking. Several comments favored a uniform policy for the period commencing the availability of lands for filing of noncompetitive offers. Other comments requested that lands not receiving bids be made available on the next business day after the competitive sale. A few comments recommended a cooling off period of varying duration prior to noncompetitive opening of the lands in order to allow review of the available lands before the appointed time for filing of lease offers. The final

rulemaking has amended this section to make it consistent with Subpart 3110 regarding availability of those lands for noncompetitive leasing when no bids are received on competitive parcels.

Several comments on the proposed rulemaking suggested that a conflict exists between §§ 3120.6 and 3120.5-1(c). No change is made in the final rulemaking, as parcels receiving no bids in the competitive process are required to be offered noncompetitively, whereas parcels with tie bids resulting from multiple nominations are to be reoffered competitively.

One comment suggested that the Bureau of Land Management should recycle parcels into another competitive offering when no bids are received at the competitive oral auction and no offers are filed during the 2-year period. Such lands should not be recycled until the public identifies the lands to be of interest, e.g., through an expression of interest or a noncompetitive offer filed under § 3110.1(a). This suggestion is not adopted in the final rulemaking.

Section 3120.7 Future interest.

Section 3120.7-1 Nomination to make lands available for competitive lease.

Several comments were received on § 3120.7-1(b) of the proposed rulemaking that would have allowed the holder(s) of the present operating rights to exceed the highest bid received at the competitive sale. A few comments argued strenuously that the present interest holder should have no preferential right. One comment indicated that to allow such a preferential right would subvert the competitive process under the Reform Act by allowing the present owner to avoid bidding in the competitive process. Another comment suggested that allowing a party to exceed the highest bid would not comport with any previous policy. Some comments observed that the Bureau apparently would have to undertake the burden of both identifying and ensuring that the present owner of the oil and gas rights was identified and offered the opportunity to bid. A final comment expressed the view that the present interest owner should be required to protect his or her interest by bidding at the competitive sale.

The Reform Act allows no preference to a present interest holder following a competitive offering of such future interest lands. Accordingly, the final rulemaking removes § 3120.7-1(b).

Section 3120.7-2 Future interest terms and conditions.

A few comments contended that compliance with § 3120.7-2(a) of the proposed rulemaking would be impossible should the future interest owner not hold the present operating rights. The suggestion to limit the requirement to those future interest lessees who also hold the present oil and gas interests has been adopted in the final rulemaking.

A few comments suggested that clarification was needed for the phrase "the same type and proportion," as used in this section of the proposed rulemaking with respect to the requirement that any transfer of the present interest lease would require a similar transfer of the future interest lease. This issue has been discussed earlier in this preamble under § 3110.9-3. For the same reasons addressed previously, no change has been made in the final rulemaking.

Section 3162.3-1 Drilling applications and plans.

Numerous comments were received on this section of the proposed rulemaking. One comment suggested that if the authorized officer denied drilling permits on a lease such that a lease could not be developed, that the leaseholder should be refunded all bonus and rental moneys that had been paid. If such denials were to occur, the lessee or operator could resort to the administrative appeals process and then proceed with judicial recourse for the return of any moneys. This issue is beyond the scope of this rulemaking.

A few comments felt that the 30-day Application for Permit to Drill approval process was too short for completion of the environmental review needed for the drilling proposal. However, the time frame stated in the regulation language does not require the approval of an Application for Permit to Drill on the 30th day. As may be necessary, the Bureau may delay approval based on appropriate reasons. The 30-day period, however, is a period of time in which the Bureau can normally process the majority of the applications to drill.

Numerous comments on this section of the proposed rulemaking were received concerning the administrative delay in approval of an application to drill that would result from the 30-day notice requirement. One comment expressed the view that the additional 30 days of public notice is a superfluous requirement. Other comments also expressed concern that if a lease were to expire during this 30-day period,

particularly if a protest is received during this public review period, the primary term of the lease would, in effect, be shortened by one month. Many comments suggested that those filing an Application for Permit to Drill during the final 30 days of the primary term should be awarded an automatic lease suspension or that any delay in approval be compensated by an automatic extension of the lease. This suggestion has not been adopted in the final rulemaking. As stated above, 30 days is a reasonable period in which the review and approval process on an Application for Permit to Drill can be completed. Onshore Oil and Gas Order No. 1 already establishes a 30-day period for processing a Notice of Staking or an Application for Permit to Drill. In Order No. 1, Operators are forewarned that they should not always expect timely approval if they do not submit their applications at least 30 days prior to the day they wish to start operations. Lack of action on the part of an operator to initiate the required permitting process in a timely manner does not generally constitute reason for a suspension of lease terms or extension of a lease. If the Bureau is unable to take action prior to lease expiration, the operator would be advised and reasons would be given for the delay so that the operator can exercise any appeal rights provided by the regulations.

Another comment suggested that in order to be fully effective on National Forest System lands the rulemaking for § 3162.3-1 should be jointly promulgated with the Department of Agriculture. The Forest Service is developing its separate regulations to govern surface activities on National Forest System lands. The Bureau has no control over the content and timing of the regulations developed by another agency. The Bureau has coordinated with the Forest Service and will comment on its rulemaking to assist in the development of a process that is as streamlined and uniform as possible for drilling applications and surface use plans of operations in order to meet the provisions of the Reform Act.

A few comments recommended that, because the general public, i.e., all interested parties, had the opportunity to consider lease development activities prior to lease issuance through the land use planning and environmental analysis processes, potential opposition to drilling proposals should be limited only to those parties that have a direct interest in the lands affected by the Application for Permit to Drill. Other comments expressed the view that consultation with only the necessary Federal and State agencies was

appropriate. The Reform Act states that notice of an Application for Permit to Drill shall be posted at least 30 days before approval and does not address any specific element of the public. There are instances when the authorized officer may have knowledge of parties having specific interests, and consultation with such parties may be appropriate. The final rulemaking is amended to indicate that the authorized officer shall consult with Federal surface management agencies and other interested parties as required and appropriate.

Another comment expressed concern that potential administrative delays in processing Applications for Permit to Drill could occur due to agencies not having established procedures in effect. The Bureau of Land Management currently has procedures in place as specified in Onshore Oil and Gas Order No. 1. New authority is given by the Reform Act to the Secretary of Agriculture for approval of surface use plans of operations. The Forest Service is currently promulgating regulations and procedures to address its processing of these surface use plans of operations.

One comment suggested that the final rulemaking needs to provide specific terms and conditions governing reclamation of disturbed lands and expressed concern that the proposed rulemaking provided for reclamation only upon abandonment. Regulations are not the appropriate place for site specific reclamation standards to be addressed. Such site specific standards are more properly contained as a part of each surface use plan of operations, tailored to the location of the proposed activity. Order No. 1 requires that the lessee or operator must reclaim those portions of disturbed lands that are no longer required for operations. The final rulemaking adopts the proposed language without change.

A few comments were received concerning the distinction made in the proposed rulemaking between the surface use plan of operations and the drilling plan. Some comments stated that there is not a distinct division between the two plans and that the Bureau should still retain authority over some of contents of the surface use plan of operations. Some comments suggested that the reference to the surface use plan of operations in § 3162.3-1 (d)(2), (f), and (h)(3) should be amended to define more clearly the purpose for the surface use plan. In response to these comments, the final rulemaking has added a definition in § 3160.0-5 of a surface use plan of operations as a plan for surface use,

disturbance, and reclamation for oil and gas drilling operations. The details of the contents of a surface use program are contained in the Onshore Order No. 1. The Bureau will revise Onshore Order No. 1 to distinguish the surface use program as a separate plan that is not a part of the drilling plan, and to clearly show those activities that will require Forest Service approval in accordance with the Reform Act provisions.

A few comments suggested that § 3162.3-1(b) of the proposed rulemaking be revised to require that the surface use plan of operations for National Forest Systems lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the drilling plan by the Bureau of Land Management authorized officer. Similar language already exists in § 3162.3-1(h)(3). Also, the revised Interagency Agreement between the Bureau of Land Management and the Forest Service will clearly outline the approval steps for each agency. The final rulemaking makes no change to the proposed language which is adopted without change.

Some comments recommended that § 3162.3-1(c) be revised to require that no drilling operations or surface disturbance preliminary thereto be commenced prior to approval of the drilling plan and the surface use plan of operations. Similar language already exists in this section and since the Bureau of Land Management approves the Application for Permit to Drill (which consists of the drilling plan and surface use plan) no change is made in the language of the final rulemaking. For any Application for Permit to Drill on National Forest System lands, the Bureau would obtain the specific requirements concerning the surface use plan of operations from the Forest Service prior to approval of the drilling plan. Accordingly, the suggestion is not adopted.

Numerous comments were received on § 3162.3-1(d) of the proposed rulemaking. Some of the comments recommended that the Application for Permit to Drill be submitted directly to the appropriate surface managing agency in order to speed up the permit review process, with the appropriate information forwarded to the Bureau of Land Management, since the key posting times are those at the "local offices" of the surface management agency. The Bureau of Land Management has the principal responsibility for approval of the permit to drill, and the surface use plan of operations is a part of the Application for Permit to Drill. As required by Order No. 1, the authorized

officer of the Bureau of Land Management has 7 days to notify the operator whether the application is technically and administratively correct. To delay receipt by the Bureau of an application by having a surface management agency receive it first and then forward the appropriate information to the appropriate Bureau office would not allow the 7-day deadline to be met. Since both the Bureau and the Forest Service have approval authority over parts of the permit to drill, the posting requirements will have to be met in both local offices to meet the provisions of the Reform Act. The recommendation has not been adopted in the final rulemaking.

A comment suggested that an applicant be allowed to send a copy of the Application for Permit to Drill for surface not under Bureau jurisdiction to the appropriate surface management agency at the same time as it is submitted to the Bureau of Land Management to speed up the processing. Onshore Order No. 1 will be revised to encourage, but not require, operators to submit a duplicate copy of the application for lands and surface of which is not under the Bureau's jurisdiction to the other surface managing agency when posting would be required at both locations.

Another comment suggested that § 3162.3-1(d) be clarified by substituting the phrase "commencement of operations is desired" in lieu of the phrase "commencement of operations is anticipated" that was contained in the proposed rulemaking. The comment expressed the view that "anticipated" could be interpreted to mean that approval to commence operations is not needed. This change is adopted in the final rulemaking.

Several comments received on § 3162.3-1(e) of the proposed rulemaking expressed the view that the phrase "expected problems" contained in this section is confusing and unrealistic since companies plan to drill problem-free wells. The comments felt that it was not clear what specific information would be expected to be addressed and submitted in response to this provision. The comments also indicated that the phrase "proposed mitigation" was not clear and suggested that the sentence read "... and proposed mitigation measures to address such hazards." These comments have been adopted and the final rulemaking has been amended to remove ambiguity.

Some comments suggested that the word "restoration" in § 3162.3-1(f) of the proposed rulemaking be changed to "reclamation" to be more consistent

with the language used in the Reform Act. This recommendation is adopted.

One comment suggested adding language in § 3162.3-1(f) that would identify the information the Secretary of Agriculture would require in the surface use plan of operations for National Forest System lands. This recommendation is not adopted since the Forest Service will address such requirements in its rulemaking.

A few comments suggested that the language contained at the end of § 3162.3-1(e) of the proposed rulemaking also be added in § 3162.3-1(f). This amendment would allow for surface use plans of operations to be submitted for multiple wells. This suggestion would benefit the permitting process and, therefore, it has been adopted in the final rulemaking.

Some comments suggested that the Bureau should specify more clearly in the final rulemaking where the Application for Permit to Drill, including the surface use of plan of operations, is required to be posted. The Bureau agrees that this would add clarity to the regulations and language is added in § 3162.3-1(g) to require that the posting shall be in the office of the authorized officer of the BLM and in the appropriate surface management agency if other than the BLM.

Numerous comments were received on § 3162.3-1(g) of the proposed rulemaking questioning what would constitute timely posting of notice for the submittal of the Application for Permit to Drill. A few comments requested that the posting period and review and approval process should run concurrently. The Reform Act requires the posting of the Application for Permit to Drill for at least 30 days prior to approval. The law does not limit posting to only 30 days. The Bureau office where the application will be approved is the office where the application is required to be posted. To allow for concurrent posting in the office of the surface management agency, the Bureau will strive to complete the posting as soon as possible after receipt of the Application for Permit to Drill and/or the Notice of Staking. This suggestion is adopted and appropriate language is added in § 3162.3-1(g) of the final rulemaking. Bureau field offices will be instructed to use all available means to process each Application for Permit to Drill and/or Notice of Staking during the 30-day posting period to minimize the need for additional time beyond this prescribed minimum period.

A few comments questioned the level of detail required in the posting of the notice required in § 3162.3-1(g) of the

proposed rulemaking. One of the comments pointed out that the proposed rulemaking required a map and a narrative description, but the Reform Act requires maps or a narrative description. To be more consistent with the law, the final rulemaking is amended to require maps or a narrative description. In addition, this section is revised in the final rulemaking to specify the level of information required when maps are used. The level of detail required should be sufficient to allow a person to determine reasonably the area where an action would occur. The purpose of the posting, however, is not to give a detailed account of the actions proposed which would be included in the surface use plan of operations that is available in the posting office for public review.

Another comment questioned when a new posting would be required if a drill site location was moved subsequent to the start of the 30-day posting period. If the proposed location is moved, the authorized officer would have to determine if the affected areas have changed significantly enough to require a 30-day posting period. This should remain an administrative decision, since each case will have to be judged on its own merits.

A few comments expressed concern that if both an Application for Permit to Drill and a request for modification of lease terms were concurrently applied for that there would be separate 30-day posting periods that would run in tandem. The Reform Act and these regulations do so specify. The practice of the Bureau generally will be that each request would be treated as a separate application and a 30-day posting period would be required for each regardless of their time of submittal. However, in normal circumstances these two review periods could occur at the same time without delay of approval of the proposed action. The final rulemaking does not adopt this suggestion.

A few comments were received on the language concerning appeals to the Forest Service for the surface use plan of operations contained in § 3162.3-1(h)(3) of the proposed rulemaking. The language in this section is sufficiently clear that the Forest Service alone is responsible for reviewing the decisions rendered on National Forest System lands.

One comment felt that the 30-day notice requirement should not apply to those Applications for Permit to Drill on private surface. The Reform Act is silent with respect to any distinction concerning private surface and Federally-administered surface. No

change is adopted in the final rulemaking since the law requires posting of the required notice.

A comment suggested that the language "as soon as practicable but in no event later than 5 working days" be added in § 3162.3-1(h). This change is adopted in the final rulemaking as suggested and will make it clear that the authorized officer is to act within a specific time period.

A final comment on this section of the proposed rulemaking suggested that the use of the word "stipulations" could cause confusion because that term is used only in legal documents that convey rights. The final rulemaking adopts the suggestion and replaces "stipulations" with "conditions".

Section 3162.3-2 Subsequent well operations.

Section 3162.3-2(a) is revised to make a technical change to specify that if additional surface disturbance is involved in a proposed drilling plan for subsequent well operations, the applicant's proposal also is required to contain a surface use plan of operations.

Section 3162.3-3 Other lease operations.

This section of the rulemaking is also amended to provide that any proposal for other lease operations is required to include a surface use plan of operations. These revisions, along with a revision in § 3164.3(b), will clarify the role of the U.S. Forest Service in the permitting process as required by the Reform Act.

Section 3162.3-4 Well abandonment.

Section 3162.3-4 in the final rulemaking is amended in response to comments to change the phrase "rehabilitated or restored" to "reclaimed" to be consistent with the language used in the Reform Act. Section 3162.5-1(b) also is amended to make this change in the final rulemaking.

A few comments requested that specific procedures be established in § 3162.3-4(a) of the final rulemaking or in an Onshore Operating Order to document the reclamation compliance requirements. The comments also requested that the language in this section be revised to require that the lessee or operator shall promptly plug and abandon, in accordance with applicable notices and orders. In response to these comments, the specific procedures for documenting operator compliance with reclamation requirements are already contained in Onshore Order No. 1. The intent of this rulemaking is to ensure that operators follow site-specific requirements for the

plugging and abandonment of wells as contained in the surface use plan of operations. Such specific information is not appropriately covered universally in an onshore operating order or notice. Two onshore orders are currently in preparation which will outline the Bureau's general well bore requirements for abandonment.

Section 3164.3 Surface rights

A few comments on § 3164.3(b) recommended that this section be revised to reflect more accurately the responsibilities of the U.S. Forest Service as stated in the Reform Act. These comments are adopted and the final rulemaking is amended to include the addition of a new paragraph (c) to specify that the Forest Service shall regulate all surface disturbing activities in accordance with its regulations, and provide the Bureau's authorized officer the notification of appropriate approvals for such activities on National Forest System lands. The provisions of this regulation and approval by the Forest Service are required to be consistent with the terms and conditions of the specific oil and gas lease contract. The Forest Service has no more authority to disapprove activities authorized by the lease rights granted specifically by the lease contract than does the Bureau of Land Management.

Subpart 3220—Competitive leases; General

A comment recommended that the competitive geothermal resources leasing regulations be brought into conformance with the competitive oil and gas leasing regulations contained in this rulemaking by changing the geothermal competitive bidding system from sealed bids to oral auction. Even though the Geothermal Steam Act of 1970 does not prohibit the Secretary from adopting rule changes allowing for oral sales under the geothermal leasing program, such a change were not included in the proposed rulemaking and cannot be included in this final rulemaking.

A few comments were received which were not directed at specific provisions of the proposed rulemaking but rather questioned why the opportunity had not been taken in this rulemaking to revise the procedures for compliance with the National Environmental Policy Act of 1970. These comments referenced two court decisions as evidence that Bureau procedures were deficient. One is a 5-year old decision, *Sierra Club v. Peterson*, 717 F.2d 1409 (D.C. Cir. 1983), and the other is *Conner v. Burford*, 836 F.2d 1521 (9th Cir. 1988), both of which

involved a National Environmental Policy Act document prepared by the U.S. Forest Service for leasing within the National Forest System in 1981. The Bureau's National Environmental Policy Act compliance procedures have been evolving and improving in recent years. In particular, revised planning regulations were promulgated effective July 1983. These regulations address the oil and gas leasing program as well as all Bureau programs in a systematic, cohesive manner. Also, in November 1986, supplemental guidance specifically addressing planning and National Environmental Policy Act compliance within the Bureau's oil and gas leasing program was implemented through Bureau Manual 1624.2. Both the rulemaking and the Bureau Manual were developed with full public involvement. The Bureau will continue to review its planning and National Environmental Policy Act compliance procedures for all programs on an ongoing basis. At such time as additional regulatory changes appear necessary, proposed rulemaking will be initiated.

Editorial and technical changes, and grammatical and spelling corrections, have been made as needed.

The principal authors of this final rulemaking are Rob Cervantes, Sie Ling Chiang, Karl Duscher, Lois Mason, Judy Reed, and Jeff Zabler, of the Bureau of Land Management Washington Office assisted by numerous Bureau of Land Management Field Office representatives and the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this final rulemaking will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The information collection requirements contained in Parts 3100, 3110, 3120, 3130, 3160, 3180, 3200, and 3280 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0034, 1004-0065, 1004-0067, 1004-0074, 1004-0132,

1004-0134, 1004-0135, 1004-0136, 1004-0137, 1004-0138, and 1004-0145.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources.

43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3130

Alaska, Government contracts, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3180

Government contracts, Oil and gas exploration, Public lands—mineral resources, Surety bonds.

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3280

Geothermal energy, Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Federal Onshore Oil and Leasing Reform Act of 1987, Pub. L. 100-203, and other authorities cited below, Part 3000, Group 3000, and Parts 3100, 3110, 3120, 3130, 3160, and 3180, Group 3100, and Parts 3200 and 3280, Group 3200, Subchapter C, Chapter II of Title 43 of the Code of

Federal Regulations, are amended as set forth below.

June 2, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

1. The table of contents of Part 3000 is amended by adding the following section:

3000.9 Enforcement.

PART 3000—[AMENDED]

1a. The authority citation for Part 3000 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

2. Section 2000.0-5 is amended by revising paragraph (f) to read:

§ 3000.0-5 Definitions.

(f) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that all oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821-2-1 of this title for office location and area of jurisdiction of Bureau of Land Management offices).

2a. Section 3000.4 is revised to read as follows:

§ 3000.4 Appeals.

Except as provided in §§ 3101.7-3(b), 3120.1-3, 3165.4, and 3427.2 of this title, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3000 or Group 3100 of this title shall have a right of appeal pursuant to Part 4 of this title.

3. Section 3000.9 is adopted to read as follows:

§ 3000.9 Enforcement.

Provisions of section 41 of the Act shall be enforced by the United States Department of Justice.

PART 3100-OIL AND GAS LEASING

3a. The table of contents of Subpart 3100 is amended by removing the entries for §§ 3100.3, 3100.3-1, and 3100.3-2, and by redesignating §§ 3100.4, 3100.4-1, 3100.4-2, and 3100.4-3 as §§ 3100.3, 3100.3-1, 3100.3-2, and 3100.3-3, respectively.

3b. The table of contents of Subpart 3101 is amended by revising the title of § 3101.1-1 to read "Lease form."; by revising the title of § 3101.1-2 to read "Surface use rights."; by adding the following entries after § 3101.1-2:

3101.1-3 Stipulations and information notices.

3101.1-4 Modification or waiver of lease terms and stipulations.

by revising the title of § 3101.7-2 to read "Action by the Bureau of Land Management."; by removing §§ 3101.7-3 and 3101.7-4; and by redesignating § 3101.7-5 as § 3101.7-3.

3c. The table of contents of Subpart 3109 is amended by revising the title of § 3109.2 to read "Units of the National Park System."

4. The authority citation for Part 3100 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3100—Oil and Gas Leasing; General

5. Section 3100.0-3 is amended by removing the word "and" at the end of paragraphs (a)(2) (iii) and (v), by adding paragraphs (vii), (viii), (ix), (x), and (xi) to paragraph (a)(2), by removing the word "and" at the end of paragraph (b)(92)(vi), and adding paragraphs (viii), (ix), (x), (xi), and (xii) to paragraph (b)(2), by revising the title of paragraph (g)(4), and by removing the word "areas" in the first sentence of paragraph (g)(4) and replacing it with the phrase "units of the National Park System", to read as follows:

§ 3100.0-3 Authority.

(a) * * *

(2) * * *

(vii) Lands recommended for wilderness allocation by the surface managing agency;

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) * * *

(2) * * *

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

* * * * *

(g) * * *

(4) *Units of the National Park System.*

* * * * *

6. Section 3100.0-3(c) is amended by removing the citation "(Pub. L. 96-514)" and replacing it with the citation "(42 U.S.C. 6506)".

7. Section 3100.0-5 is amended by adding paragraph (k) to read:

§ 3100.0-5 Definitions.

* * * * *

(k) "Bid" means an amount of remittance offered as partial compensation for a lease equal to or in excess of the national minimum acceptable bonus bid set by statute or by the Secretary, submitted by a person or entity for a lease parcel in a competitive lease sale.

§§ 3100.3, 3100.3-1, and 3100.3-2 [Removed]

8. Sections 3100.3, 3100.3-1, and 3100.3-2 are removed in their entirety.

§§ 3100.4, 3100.4-1, 3100.4-2, and 3100.4-3 [Redesignated as §§ 3100.3, 3100.3-1, 3100.3-2, and 3100.3-3]

9. Sections 3100.4, 3100.4-1, 3100.4-2, and 3100.4-3 are redesignated as §§ 3100.3, 3100.3-1, 3100.3-2, and 3100.3-3, respectively, and the cross reference to "§ 3100.4-1(b)" in newly redesignated § 3100.3-3 is amended to read "§ 3100.3-1(b)".

Subpart 3101—Issuance of Leases

9a. Section 3101.1-3 is amended by revising the third and fourth sentences to read:

§ 3101.1-3 Stipulations and information notices.

* * * * *

* * * Any party submitting a bid under Subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5-1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. * * *

10. A new § 3101.1-4 is added to read:

§ 3101.1-4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an

issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.

11. Section 3101.7-1 is revised to read:

§ 3101.7-1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

§§ 3101.7-2 and 3101.7-3 [Removed]

12. Sections 3101.7-2 and 3101.7-3 are removed in their entirety.

§ 3101.7-4 [Redesignated as § 3101.7-2 and Amended]

13. Section 3101.7-4 is redesignated as § 3101.7-2 and paragraph (b) is revised to read:

§ 3101.7-2 Action by the Bureau of Land Management.

* * * * *

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

§ 3101.7-5 [Redesignated as § 3101.7-3 and Revised]

14. Section 3101.7-5 is redesignated as § 3101.7-3 and is revised to read:

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under Part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

15.-16. Section 3101.8 is amended by revising the first sentence to read:

§ 3101.8 State's or charitable organization's ownership of surface overlying federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. * * *

Subpart 3102—Qualifications of Lessees

17. Section 3102.5-1 is revised to read:

§ 3102.5-1 Compliance.

In order to actually or potentially own, hold, or control an interest in a lease or prospective lease, all parties, including corporations, and all members of associations, including partnerships of all types, shall, without exception, be qualified and in compliance with the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under Subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term "entity" is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in § 3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

§ 3102.5-2 [Corrected]

18. Section 3102.5-2 as published in the *Federal Register* on May 16, 1988 (53 FR 17340), is amended by correcting the transposed letters "fo" in the second sentence thereof to read "of".

Subpart 3103—Fees, Rentals, and Royalty

19. Section 3103.1-1 is revised to read:

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

20. Section 3103.2-1 is amended by revising the first sentence of paragraph (a) and all of paragraph (b) to read:

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first years rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. * * *

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

* * * * *

21. Section 3103.2-2 is amended by correcting the first sentence as published in the *Federal Register* of May 16, 1988 (53 FR 17340), to read, "Rentals shall be paid on or before the lease anniversary date." and by removing paragraphs (a) through (k) and inserting in their place paragraph (a) through (f) to read:

§ 3103.2-2 [Amended]

* * * * *

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be \$1.50 per acre or fraction thereof for the first 5 years of the lease term and \$2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or

offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former Subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of \$2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of \$2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2-3 of this title, and on noncompetitive leases that were originally issued under § 3108.2-4 of this title, the annual rental shall be \$5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be \$10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2-3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2-3 of this title, the annual rental on that lease shall increase by an additional \$5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional \$10 per acre or fraction thereof for leases that were originally issued competitively.

22. Section 3103.3-1 is revised to read:

§ 3103.3-1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented

oil placer mining claims under § 3108.2-4 of this title, issued after December 22, 1987, except:

(i) Leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) Leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16½ percent on noncompetitive leases reinstated under § 3108.2-3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) Not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7-4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under Part 16 of this title.

§ 3103.3-2 [Amended]

23. Section 3103.3-2(a) is revised to read:

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of \$1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

* * * * *

Subpart 3104—Bonds

24. Section 3104.1 is revised to read:

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

25. Section 3104.2 is revised to read:

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than \$10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

26. Section 3104.3 is revised to read:

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than \$25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating

rights (sublessees), or operators may furnish a bond in an amount of not less than \$150,000 covering all leases and operations nationwide.

27. Section 3104.4 is revised to read:

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

28. Section 3104.5 is revised to read:

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

29. Section 3106.1 is revised to read as follows:

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5-3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

Subpart 3107—Continuation, Extension of Renewal

§ 3107.1 [Corrected]

29a. Section 3107.1 is amended by correcting the word "lease" in the phrase "penetrate at least 1 formation recognized" in the second sentence thereof as published in the Federal Register of May 16, 1988 (53 FR 17340), to read "least".

30. Section 3107.2-2 is amended by adding at the end thereof a sentence to read:

§ 3107.2-2 Cessation of production.

* * * The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

31. Section 3107.2-3 is amended by revising the first sentence to read:

§ 3107.2-3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to so. * * *

32. Section 3107.7 is amended by revising the last sentence and adding an additional sentence to read:

§ 3107.7 Exchange leases—20-year term.

* * * An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of \$75. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

33. Section 3107.8-1(a) is revised to read:

§ 3107.8-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

34. Section 3107.8-3(a) is amended by revising the last sentence to read:

§ 3107.8-3 Approval.

(a) * * * Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

Subpart 3108—Relinquishments, Termination, Cancellation

35. Section 3108.1 is amended by revising the last sentence to read:

§ 3108.1 Relinquishment.

* * * A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension by authorized shut-in or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

§ 3108.2-4 [Amended]

36. Section 3108.2-4(e)(2) is amended by removing "§ 3102.3-1" and replacing it with "§ 3103.3-1."

37. Section 3108.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c), to read as follows:

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest,

only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

37a. The caption of § 3108.5 as published in the *Federal Register* of May 16, 1988 (53 FR 17340), is corrected to read as follows:

§ 3108.5 Waiver or suspension of lease rights.**Subpart 3109—Leasing Under Special Acts****§ 3109.1-2 [Corrected]**

37b. Section 3109.1-2 as published in the *Federal Register* of May 16, 1988 (53 FR 17340), is amended by correcting the word "by" the second time it appears in the last sentence thereof to read "but".

§ 3109.2 [Amended]

37c. Section 3109.2 is amended by revising its title to read "Units of the National Park System", by revising the phrase "National Park Service areas" wherever it appears to read "units of the National Park System", and by revising the words "area" and "areas" wherever they appear to read "unit" and "units", respectively.

§ 3109.3 [Removed]**§ 3109.4 [Redesignated as § 3109.3]**

38. Section 3109.3 is removed, and § 3109.4 is redesignated as § 3109.3.

39. Part 3110 is revised to read:

PART 3110—NONCOMPETITIVE LEASES**Subpart 3110—Noncompetitive Leases****Sec.**

- 3110.1 Lands available for noncompetitive offer and lease.
- 3110.2 Priority.
- 3110.3 Lease terms.
- 3110.3-1 Duration of lease.
- 3110.3-2 Dating of leases.
- 3110.3-3 Lease offer size.
- 3110.4 Requirements for offer.
- 3110.5 Description of lands in offer.
- 3110.5-1 Parcel number description.
- 3110.5-2 Public domain.
- 3110.5-3 Acquired lands.
- 3110.5-4 Accreted lands.
- 3110.5-5 Conflicting descriptions.
- 3110.6 Withdrawal of offer.
- 3110.7 Action on offer.
- 3110.8 Amendment to lease.
- 3110.9 Future interest offers.
- 3110.9-1 Availability.
- 3110.9-2 Form of offer.
- 3110.9-3 Fractional present and future interest.
- 3110.9-4 Future interest terms and conditions.

Authority: Mineral Leasing Act of 1920, as amended and supplemental (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-

359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive offer and lease.

(a) *Offer.* (1) Effective June 12, 1988, through January 2, 1989, noncompetitive lease offers may be filed only for lands available under § 3110.1(b) of this title. Noncompetitive lease offers filed after December 22, 1987, and prior to June 12, 1988, for lands available for filing under § 3110.1(a) of this title shall receive priority. Such offers shall be exposed to competitive bidding under Subpart 3120 of this title and if no bid is received, a noncompetitive lease shall be issued all else being regular. After January 2, 1989, noncompetitive lease offers may be filed on unleased lands, except for:

(i) Those lands which are in the one-year period commencing upon the expiration, termination, relinquishment, or cancellation of the leases containing the lands; and

(ii) Those lands included in a Notice of Competitive Lease Sale or a List of Lands Available for Competitive Nominations. Neither exception is applicable to lands available under § 3110.1(b) of this title.

(2) Noncompetitive lease offers may be made pursuant to an opening order or other notice and shall be subject to all provisions and procedures stated in such order or notice.

(3) No noncompetitive lease may issue for any lands unless and until they have satisfied the requirements of § 3110.1(b) of this title.

(b) *Lease.* Only lands that have been offered competitively under Subpart 3120 of this title, and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.23-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

§ 3110.2 Priority.

(a) Offers filed for lands available for noncompetitive offer or lease, as

specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2-3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. An offer shall not be available for public inspection the day it is filed.

(b) If more than 1 application was filed for the same parcel in accordance with the regulations contained in former Subpart 3112 of this title, and if no lease has been issued by the authorized officer prior to the effective date of these regulations, only a single priority application shall be selected from the filings. If the selected application fails to mature into a lease, the lands shall be available for offer under § 3110.1(a) of this title.

§ 3110.3 Lease terms.

§ 3110.3-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 days.

§ 3110.3-2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3-3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey

system or are within an approved protracted survey, except where the offer includes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands. This paragraph shall not apply to offers made under § 3108.2-4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale during that period specified under § 3110.5-1 of this title.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.5-2(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost.

§ 3110.4 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2-4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by the first year's rental and a nonrefundable filing fee of \$75. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A

noncompetitive offer to lease a future interest applied for under § 3109.9 of this title shall be accompanied by a nonrefundable filing fee of \$75. Where remittance for offers are returned for insufficient funds, the offer shall obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2-1(a) and 3110.3-3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with Subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

§ 3110.5 Description of lands in offer.

§ 3110.5-1 Parcel number description.

From the first day following the end of a competitive process until the end of that same month, the only acceptable description for a noncompetitive lease offer for the lands covered by that competitive process shall be the parcel number on the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, whichever is appropriate. Each such offer shall contain only a single parcel. Thereafter, the description of the lands shall be made in accordance with the remainder of this section.

§ 3110.5-2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by

courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the **Federal Register**, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under § 3108.2-4 of this title, except that deficiencies shall be curable.

§ 3110.5-3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance

document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

§ 3110.5-4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be

described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

§ 3110.5-5 Conflicting descriptions.

If there is any variations in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

§ 3110.6 Withdrawal of offer.

An offer for noncompetitive lease under this subpart may be withdrawn in whole or in part by the offeror. However, a withdrawal of an offer made in accordance with § 3110.1(b) of this title may be made only if the withdrawal is received by the proper BLM office after 60 days from the date of filing of such offer. No withdrawal may be made once the lease, an amendment of the lease, or a separate lease, whichever covers the lands so described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3-3(a) of this title.

§ 3110.7 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and

conditions of the lease form currently in use.

§ 3110.8 Amendment to lease.

After the competitive process has concluded in accordance with Subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3-2 of this title.

§ 3110.9 Future interest offers.

§ 3110.9-1 Availability.

A noncompetitive future interest lease shall not be issued until the lands covered by the offer have been made available for competitive lease under Subpart 3120 of this title. An offer made for lands that are leased competitively shall be rejected.

§ 3110.9-2 Form of offer.

An offer to lease a future interest shall be filed in accordance with this subpart, and may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9-3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall

have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9-4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any noncompetitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

Subparts 3111 and 3112 [Removed]

40. Subparts 3111 and 3112 are removed in their entirety.

41. Part 3120 is revised in its entirety to read:

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.

3120.1 General.

3120.1-1 Lands available for competitive leasing.

3120.1-2 Requirements.

3120.1-3 Protests and appeals.

3120.2 Lease terms.

3120.2-1 Duration of lease.

3120.2-2 Dating of lease.

3120.2-3 Lease size.

3120.3 Nomination process.

3120.3-1 General.

3120.3-2 Filing of a nomination for competitive leasing.

3120.3-3 Minimum bid and rental remittance.

3120.3-4 Withdrawal of a nomination.

3120.3-5 Parcels receiving nominations.

3120.3-6 Parcels not receiving nominations.

3120.3-7 Refund.

3120.4 Notice of competitive lease sale.

3120.4-1 General.

3120.4-2 Posting of notice.

3120.5 Competitive sale.

3120.5-1 Oral auction.

3120.5-2 Payments required.

Sec.

- 3120.5-3 Award of lease.
- 3120.6 Parcels not bid on at auction.
- 3120.7 Future interest.
- 3120.7-1 Nomination to make lands available for competitive lease.
- 3120.7-2 Future interest terms and conditions.
- 3120.7-3 Compensatory royalty agreements.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1-1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

(e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.

(f) Lands selected by the authorized officer.

§ 3120.1-2 Requirements.

(a) Each proper BLM State office shall hold sales at least quarterly if lands are available for competitive leasing.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be \$2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1-3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

§ 3120.2 Lease terms.

§ 3120.2-1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2-2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2-3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.3-1 through 3120.3-7 of this title after review of any comments received during a period of not less than 30 days following publication in the *Federal Register* of notice that implementation of those sections is being considered.

§ 3120.3-1 General.

The Director may elect to accept nominations requiring submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act, or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions contained therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3-2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form approved by the director shall:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record:

(b) Be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) Be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable and shall be returned with all moneys refunded if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in

§ 3120.5-2(b) of this title for each parcel nominated on the form.

§ 3120.3-3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable with all moneys refunded.

§ 3120.3-4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for cause, in which case all moneys shall be refunded.

§ 3120.3-5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3-6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3-7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4-1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.4-2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BLM office having

jurisdiction over the lands as specified in § 1821.2-1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5-1 Oral auction.

(a) Parcels shall be offered by oral bidding. The existence of a nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral auction.

§ 3120.5-2 Payments required.

(a) Payments shall be made in accordance with § 3103.1-1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid of \$2 per acre or fraction thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of \$75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5-3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with Subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5-2(b) of this title. Failure to comply with § 3120.5-2(c) of this title shall result in rejection of the bid and

forfeiture of the monies submitted under § 3120.5-2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the lands shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

§ 3120.6 Parcels not bid on at auction.

Lands offered at the oral auction that receive no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7-1 Nomination to make lands available for competitive lease.

A nomination for a future interest lease shall be filed in accordance with this subpart.

§ 3120.7-2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with Subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in Subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

PART 3130—OIL AND GAS LEASING—NATIONAL PETROLEUM RESERVE—ALASKA

42. The authority citation for Part 3130 is revised to read:

Authority: The Department of the Interior Appropriations Act, Fiscal year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

§ 3134.1 [Amended]

43. Section 3134.1(a) is amended by inserting the words "in accordance with the provisions of § 3104.1 of this title" after the word "bond" in the first sentence, and by removing the word "special" in the two places it appears in this paragraph.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

44. The authority citation for Part 3160 is revised to read:

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of May 21, 1930 (30 U.S.C. 301-306), the Act of March 3, 1909, as amended (25 U.S.C. 369), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g), the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); The Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.*); the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

44a. Section 3160.0-5 is amended by redesignating paragraph (v) as paragraph (w), and by inserting a new paragraph (v) to read as follows:

§ 3160.0-5 Definitions.

(v) "Surface use plan of operations" means a plan for surface use, disturbance, and reclamation.

Subpart 3162—Requirements for Lessees and Operators

45. Section 3162.3-1 is amended by revising paragraphs (d) and (e), by redesignating paragraphs (f) and (g) as (h) and (i), respectively, by adding new paragraphs (f) and (g), and by revising newly redesignated paragraphs (h) and (i), all to read as follows:

§ 3162.3-1 Drilling applications and plans.

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160-3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or

Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall

be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

§ 3162.3-2 [Amended]

46. Section 3162.3-2(a) is amended by removing the phrase "A plan proposing" at the beginning thereof, and replacing it with the phrase "A proposal for", and by adding at the end of the first sentence thereof the words "to injection. If there is additional surface disturbance, the proposal shall include a surface use plan of operations.", and by revising the word "plan" in the last sentence thereof to read "proposal".

§ 3162.3-3 [Amended]

46a. Section 3162.3-3 is amended by removing the words "proposed plan of operations" and substituting therefor the word "proposal", and by adding at the end thereof the sentence, "The proposal shall include a surface use plan of operations."

§ 3162.3-4 [Amended]

46b. Section 3162.3-4(c) is amended by removing the phrase "rehabilitated or restored" from the last sentence thereof and substituting therefor the word "reclaimed".

§ 3162.5-1 [Amended]

46c. Section 3162.5-1(b) is amended by removing the phrase "restore or rehabilitate" from the last sentence thereof and substituting therefor the word "reclaim".

Subpart 3163—Noncompliance and Assessments

§ 3163.1 [Amended]

47. Section 3163.1(a)(5) is amended by removing the words "and forfeiture declared under the surety bond" from the second sentence.

Subpart 3164—Special Provisions

48. Section 3164.3(b) is amended by removing the initial word "The" and replacing it with the words "Except for National Forest System lands, the * * *".

48a. Section 3164.3 is amended by adding at the end thereof the following new paragraph (c):

§ 3164.3 Surface rights.

(c) On National Forest System lands, the Forest Service shall regulate all surface disturbing activities in accordance with Forest Service

regulations, including providing to the authorized officer appropriate approvals of such activities.

PART 3180—[AMENDED]

Subpart 3184—[Removed and Reserved]

49. Subpart 3184 (consisting of § 3184.1) is removed and reserved.

§ 3184.1 [Removed and Reserved]

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

50. The authority citation for Part 3200 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3206—Lease Bonds

51. Section 3206.1-1 is revised to read:

§ 3206.1-1 Bond obligations.

(a) A surety of personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face the Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms

and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its terms. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions of failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

§§ 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 [Removed]

52. Sections 3206.4, 3206.4-1, 3206.4-2, and 3206.4-3 are removed in their entirety.

§ 3206.5 [Redesignated as § 3206.4 and Revised]

53. Section 3206.5 is redesignated as § 3206.4 and revised to read:

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than \$50,000 for full statewide coverage for all geothermal leases in the applicable State.

§ 3206.6 [Redesignated as § 3206.5 and Revised]

54. Section 3206.6 is redesignated § 3206.5 and revised to read:

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights

owner [sublessee], or operator may furnish a bond in an amount of not less than \$150,000 for full nationwide coverage for all geothermal leases.

55. Section 3606.6 is added to read as follows:

§ 3206.6 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3206.1-1 of this title. The amount of such a bond shall be determined by the authorized

officer. The format for such a surety bond is set forth in § 3286.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

**PART 3280—GEOTHERMAL
RESOURCES UNIT AGREEMENTS—
UNPROVEN AREAS**

56. The authority citation for Part 3280 is revised to read:

Authority: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3284 [Removed and Reserved]

57. Subpart 3284 (consisting of § 3284.1) is removed and reserved.

§ 3284.1 [Removed and Reserved]

[FR Doc. 88-13680 Filed 6-16-88; 8:45 am]

BILLING CODE 4310-84-M

Test Report

Friday
June 17, 1988

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 442, and 488
Medicare and Medicaid; Long-Term Care
Survey; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****42 CFR Parts 405, 442, and 488**

(HSQ-149-F)

Medicare and Medicaid; Long-Term Care Survey**AGENCY:** Health Care Financing Administration (HCFA), HHS.**ACTION:** Final rule.

SUMMARY: This final rule amends the Medicare and Medicaid regulations to require that the State survey agencies use the survey methods and procedures prescribed by HCFA and forms contained in regulations. The regulations define the principles on which Medicare and Medicaid survey methodologies are based and the required elements of a skilled nursing facility (SNF) or intermediate care facility (ICF) survey. This rule is in response to a court order.

EFFECTIVE DATE: These regulations are effective July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Helene Fredeking, (301) 966-7304.

SUPPLEMENTARY INFORMATION:**Background**

On July 1, 1987, we published in the *Federal Register*, at 52 FR 24752, a proposed rule (NPRM) to solicit comments on proposed changes to the regulations on the survey and certification process for nursing facilities. A survey is an onsite inspection of a nursing facility conducted by State surveyors. The survey and certification process measures facility compliance with health and safety requirements contained in the conditions of participation found in regulations at 42 CFR Part 405, Subpart S for Medicare, and 42 CFR Part 442, Subpart C for Medicaid. The proposed regulations responded to a U.S. District Court decision on March 24, 1987, *Estate of Smith v. Bowen*, 656 F. Supp. 1093 (D. Colo. 1987), in which the court ordered the Secretary to publish by June 1, 1987 an NPRM consistent with the views expressed in the order. (On June 1, the court extended the publication date to July 1, 1987.) The court directed us to specify clear requirements in the regulations that State surveyors could follow.

In issuing its ruling, the court found that an earlier rule published June 13, 1986, at 51 FR 21550, "Medicare and Medicaid Programs—Long-Term Care Survey" was invalid due to an inadequate NPRM and flaws in the

rulemaking procedure. The court ruled that the NPRM, published October 31, 1985, at 50 FR 45584, was inadequate because it did not include as a part of the regulations text "the guidelines and forms that constitute the system," information that the court concluded was "required for meaningful comment." The court also found that the rule itself was inadequate because it did not include details of the survey methodology, even though we had included this material in appendices to the preamble to the rule. Procedural flaws cited by the court include an insufficient 60-day comment period, and the Secretary's failure to extend the comment period despite numerous requests to do so. Finally, the court ruled that the statement of basis and purpose of the rule was flawed because, in its judgment, we failed to provide a sufficient description in the NPRM, or to provide an adequate opportunity for comment.

On February 18, 1988, the court ordered that we issue a final rule addressing its original concerns. It further ordered that the survey forms, procedures, and guidelines be modified as appropriate in light of public comment and incorporated in the regulations by June 17, 1988.

Related Activities

The *Smith v. Bowen* court case originated in 1975 when a class action was filed on behalf of residents in a Colorado nursing home. The plaintiffs claimed that the Secretary had failed to carry out a duty to ensure that Medicaid recipients in nursing facilities were actually receiving high quality care. The court's order that we publish final regulations describing and codifying the new long term care survey process is the latest development in this case. However, the introduction of this process constitutes only a first step in HCFA's efforts to improve quality of care in nursing homes. Although we are publishing this final rule now, in compliance with the court's order, we are also in the process of instituting more far-reaching changes in the nursing home conditions of participation and enforcement regulations that underly the long term care survey process. As described below, these changes are in line with the plaintiffs' concerns and will eventually result in further revision to the survey process.

In 1983, we contracted with the Institute of Medicine to study Federal regulations affecting long term care facilities and recommend changes that might enhance the ability of the regulatory system to assure that residents receive satisfactory care. The

study concluded in 1986 with a report that stressed the need to develop new regulations that focus on actual delivery of care and the results of that care. Based on those findings, we developed proposed regulations revising both the conditions of participation for long term care facilities and the procedures for enforcing these requirements.

On October 16, 1987, we published in the *Federal Register* proposed regulations titled, "Conditions of Participation for Long Term Care Facilities" (52 FR 38582). These regulations incorporated the outcome-oriented approach and many other recommendations of the Institute of Medicine study on long term care issues. On November 18, 1987, we published in the *Federal Register* proposed regulations titled, "Survey and Certification of Health Care Facilities" (52 FR 44300). These regulations detailed how State survey agency personnel would enforce the requirements proposed in the conditions. Together, the conditions of participation and the enforcement regulations would revamp the long term care requirements under Medicare and Medicaid to be a resident-oriented system capable of consistent implementation by States.

While we were still considering public comments on both proposed regulations, on December 22, 1987, Congress enacted the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203, which contains numerous provisions affecting the nursing facility conditions of participation requirements, the enforcement requirements, and the survey process. Many of these provisions ratify items included in our proposed regulations. Some are effective on enactment, while others are effective in 1990, and require that we develop revisions to regulations in the near future. A new survey process is required by OBRA '87, effective in 1990. In addition, due to the new statutory provisions, we are withdrawing our proposed rule on Survey and Certification of Health Care Facilities (52 FR 44300), and will publish a new proposed rule incorporating the OBRA '87 provisions.

Our progress in publishing final regulations has been slowed by the widespread interest in the issues evidenced by the large volume of public comments on the proposed regulations.

We are considering the public comments and, concurrently, analyzing the provisions of OBRA '87.

In the *Smith v. Bowen* case, the court ordered that we publish the final survey process rules by June 17, 1988. We continue to believe that, since the

survey instrument measures compliance with the conditions of participation, changes to the conditions of participation are necessary to fully establish a resident-oriented system. We are developing final rules on conditions of participation for long term care facilities to accomplish this. In the meantime, we are complying with the court order by publishing these regulations, and we are planning additional revisions to the survey process rules at a later date after we issue a final rule that revises the conditions of participation.

Discussion of Comments

We received a total of 80 letters of comment in response to the proposed regulations. The comments came from State health departments and survey agencies, provider organizations, consumer advocate groups, professional groups, and concerned individuals. Because commenters addressed all aspects of the proposed rule and its appendices, as well as a number of other issues outside the purview of this rule (e.g., the need for new nursing home conditions of participation and enforcement procedures, and higher nursing home reimbursement levels), we are providing a brief summary of the pertinent provisions of the NPRM before the comments and responses.

Commenters generally expressed support for those changes that more closely resembled a resident-centered outcome-oriented survey process in nursing homes. In addition to general comments on the contents of the proposed rule and the survey methodology, commenters offered nearly 600 specific suggestions for changes to the various appendices (Appendices A, B, and C—the Survey Report Forms, Appendix D—the Procedural Guidelines, and Appendix E—the Care Guidelines). Although some of the suggestions addressed major issues, most addressed minor technical changes or language modifications to discrete elements of one or more of the appendices.

We considered each of the individual suggestions in the development of this final rule. Based on the suggestions, we made numerous changes to the Survey Report Forms, the Procedural Guidelines and the Care Guidelines. This section concludes with a discussion of comments and responses on each of these components of the survey process. Due to the volume of the suggestions, and their generally technical and limited nature, we have not addressed each suggestion on an individual basis. Instead, we have employed the following approach:

1. Identify and address major issues or recurring issues raised by commenters in regard to any of the appendices.
2. For those issues of a more technical or limited scope, discuss our general criteria for adopting or not adopting the suggested changes in the appendices. We have developed coded charts that display the specific comments on the appendices as they appeared in the proposed rule published July 1, 1987, and our decision to change or not to change each of those provisions. These charts are available from HCFA on request.

As noted above, OBRA '87 and the revised conditions of participation for long term care facilities will implement substantive changes to the nursing home requirements and corresponding changes to the long term care survey process. Several commenters proposed that HCFA again convene work groups of State, industry and consumer representatives to assist in making the needed changes in the survey process. One major consumer advocacy organization, referring to HCFA's formation of work groups prior to national implementation of the new survey process in 1986 stated:

The periodic work meetings * * * were quite valuable for consumers, providers, health care professionals, and others. We urge you to reestablish this procedure which leads to a more enlightened public participation in the regulatory process. It is our firm belief that work sessions which include all affected parties result in more realistic proposals, which at the same time can result in higher quality standards and more effective implementation * * *

A major nursing home organization also supported work groups, and a State survey agency and a large nursing home corporation recommended the formation of a task force to revise the long term care survey process components.

We concur with these recommendations. Our past efforts in utilizing a work group composed of State survey agency, industry, and consumer representatives resulted in significant contributions to the current process. In light of the often conflicting nature of comments received, a work group approach will facilitate a more effective and consensus-based reworking of the survey process components than is possible under this final rule. We know from past experience that obtaining consensus-based input is invaluable particularly in such areas as forms design, the dietary services and meal planning areas of the Care Guidelines, and in refining major procedural aspects of the survey process. Accordingly, we will subject many of the comments received to the

further review of such a work group as the first step in initiating process refinements that will be required under OBRA '87 and the revised conditions of participation.

I. Comments on the Text of the Regulations

In the proposed rule published July 1, 1987, we revised § 405.1906, which deals with survey agency determinations of nursing facility compliance with the Medicare conditions of participation, and § 442.30, which deals with survey agency determinations of nursing facility compliance with the Medicaid requirements. To both sections we added specific principles to which a State agency must adhere in determining facility compliance with the conditions of participation. We also included in the text of the regulations specific elements of a survey. Under our proposal, a survey must consist of the following eight elements:

- (1) An entrance conference;
- (2) A resident-centered tour of the facility;
- (3) An in-depth review of a sample of residents including observation, interview and record review;
- (4) Observation of the preparation and administration of drugs for a sample of residents;
- (5) Evaluation of a facility's meals, dining areas and eating assistance procedures;
- (6) A description in the survey report of all deficiencies found during the survey;
- (7) An exit conference; and
- (8) Follow-up surveys when deficiencies are cited on the initial survey.

Note to readers: Section 405.1906 has been redesignated in this final rule as § 488.26.

Comment: Many commenters expressed support for some or all of the regulatory principles for survey agencies spelled out in §§ 405.1906(b) and 442.30(a)(5). Five commenters made specific suggestions for changing these survey principles. The substantive comments include the following:

- Three commenters suggested wording changes to §§ 405.1906(b)(2) and 442.30(a)(5)(ii) to emphasize that surveyors should be observing not just the provision of care and services, but also the results of care in assessing whether such care meets residents' needs. In addition, one commenter suggested that this principle specify that interviews with residents be cited as a means for determining compliance.

- One commenter noted that § 405.1906(b)(2), which emphasizes the

review of resident outcomes in making compliance determinations, should not apply to all Medicare providers and suppliers. The commenter pointed out that outcome-oriented survey procedures might be "difficult if not impossible to do in many supplier types."

- Two commenters recommended specific additions to §§ 405.1906(b)(3) and 442.30(a)(5)(iii), which relate to the continuing importance of surveyor judgment in determining compliance. One commenter requested that the regulations specify which professional disciplines can serve as surveyors. The other commenter suggested the addition of a statement prohibiting surveyors from providing consultation to facility staff.

- Two commenters also suggested several survey principles that should be added to these sections of the regulations. These suggestions are addressed below under "Additional Regulatory Requirements."

Response: First, we agree that in our outcome-oriented survey process, surveyors must consider the resultant effects of care on residents in assessing facility compliance. Thus, we are amending § 405.1906(b)(2) (redesignated in this final rule as § 488.26(b)(2)) and § 442.30(a)(5)(ii) to clarify that surveyors will not only observe the actual provision of care and services, but also the effects of that care. As revised, the paragraph reads as follows:

The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically, surveyors will directly observe the actual provision of care and services to residents, and the effects of that care, to assess whether the care provided meets the needs of individual residents.

Not only will this change emphasize further the importance of care outcomes, but it also achieves internal consistency among these sections of the regulations and the corresponding subsequent § 488.26(d) (as redesignated from § 405.1906) and § 442.30(a)(6). Specific survey tasks, such as interviewing residents, are addressed in § 488.26(e) (as redesignated from § 405.1906) and § 442.30(a)(7) and are not appropriate for inclusion in this area.

Second, it is correct that outcome-oriented surveys may not be possible in all supplier types. However, we have not changed the overall regulatory principle because we wish to stress the outcome orientation of Federal survey procedures. Surveyors should be cognizant of this general principle in carrying out the specific procedures spelled out in the State Operations Manual of each provider and supplier.

Finally, we have not made any changes in the language regarding surveyor judgment. The issue of surveyor consultation is a complicated one which is addressed at length in the procedural guidelines. Our position on surveyor disciplines is stated in response to comments in section II.B. of this preamble.

Comment: Only one commenter raised an objection to the requirement contained in §§ 405.1906(c) and 442.20(a)(4) that State survey agencies must use the survey methodology prescribed by HCFA for making determinations as to provider compliance. The commenter felt that this requirement should not go into effect until the survey process has been refined to the satisfaction of the State survey agencies. Two commenters recommended that the text of the regulations be amended to require that Federal surveyors employ the prescribed survey process. Another commenter suggested that the regulations not specify the numerical sections of the State Operations Manual where survey guidelines are spelled out, in order to provide maximum flexibility for future revisions or relocations of this material.

Response: We believe it is essential that all States employ a uniform, defined survey process in making compliance determinations. We have been working and will continue to work with the State agencies in making future refinements to the survey methodology.

Federal surveyors use the identical survey protocol as the State surveyors. However, we view the Regional Office Manual, rather than the Code of Federal Regulations, as the appropriate format for issuing internal operating instructions to Federal surveyors.

As recommended, we have deleted from § 488.26(c) (as redesignated from § 405.1906) and § 442.30(a)(4) the reference to a specific section of the State Operations Manual since it is neither feasible nor desirable to reference permanently all survey methods, procedures and forms at one State Operations Manual section.

Comment: With one exception, all commenters either endorsed or had no objection to the eight required survey elements specified in the regulations at §§ 405.1906(e) and 442.30(a)(7). One commenter requested that the requirement for entrance and exit conferences be deleted because a facility could effectively invalidate a survey by refusing to take part in one or both of the survey components. Other comments on these provisions include the following:

- One commenter suggested that a "pre-exit conference" be required to

inform the facility of preliminary findings prior to the exit conference. Another commenter said that regulations should provide that surveyors leave a listing of findings with the facility at the conclusion of the survey, particularly in cases in which there are standards or conditions of participation, or both, out of compliance.

- One commenter recommended that the regulations prohibit facility staff from accompanying surveyors during the inspection process; another wanted a requirement that a facility representative accompany surveyors.

- One commenter stated that HCFA should not prescribe the order in which the required survey elements be carried out.

- One commenter recommended that the wording as to when follow-up surveys must be conducted be changed in § 405.1906(e)(8) to conform with that of § 442.30(a)(7)(viii).

- Finally, one commenter suggested a series of additions to the survey elements, incorporating requirements such as meeting with a group of residents, privacy during resident interview, review of appropriateness of medication regimens, and sharing of survey finding with residents.

Response: After considering fully the commenters' concerns, we have decided to retain the eight required survey elements in the final regulations, including the entrance and exit conferences. The primary purpose of the entrance and exit conferences is to keep the facility fully informed as to planned survey procedures and preliminary results. We are confident that survey findings would still be valid should the facility choose not to cooperate at the entrance or exit conferences or both.

We do not believe it appropriate to either prohibit facility staff from accompanying surveyors or require staff to accompany surveyors. Guidelines leave this matter entirely to the preference of the surveyors, with the sole exception that interviews with residents should be conducted in private so that residents can speak freely. Also, we have not prescribed the order in which surveyors must carry out the survey tasks.

As recommended, we have changed the wording of § 488.26(e)(8) (as redesignated from § 405.1906) regarding follow-up surveys to conform with that of proposed § 442.30(a)(7)(viii). Both sections will now require "follow-up surveys as appropriate." We have not, however, made any additions to the eight required survey elements. Each of the additions suggested by the commenter is a component of one of the

survey elements and is addressed in the procedural guidelines.

Comment: In addition to the regulatory recommendations that have been addressed above, seven commenters had other suggestions for new or expanded regulatory requirements. These include the following:

- The regulations should require that all surveys be unannounced;
- The language in § 405.1906(a) regarding evaluation of a provider's compliance with the standards within a condition should be amended;
- The regulations should require surveyors to interview the family members of residents; and
- The regulations should require that States provide a uniformly-determined level of reimbursement to all nursing homes.

Response: The requirement for unannounced surveys is contained in section 2700 of the State Operations Manual. In response to comments, we are incorporating the recommendation on unannounced surveys by adding language to the procedural guidelines to emphasize the need to conduct unannounced surveys. As modified, the guidelines are now located at § 488.110. Certain provisions in OBRA 1987 have an impact on both unannounced surveys and the introductory regulatory language on compliance determinations. We intend to issue a new proposed rule that incorporates the OBRA 1987 provisions. In the meantime, we have withdrawn our proposed rule on Survey and Certification of Health Care Facilities, published in the *Federal Register* on November 18, 1987 at 52 FR 44300.

Concerning the interview of family members, we recognize the potential value of the views of residents' family members. Although we cannot mandate that surveyors interview family members since family members may not always be present, the guidelines recommend that surveyors use this valuable source of information. The last comment, regarding nursing home reimbursement, is beyond the scope of this rule.

Comment: Twenty-six commenters (mainly State survey agencies and provider groups) stated that the proposed survey system does not provide sufficient guidance to surveyors on when resident care fails to meet regulatory standards and when care problems constitute enforceable deficiencies. They cited the need for substantive standards of care that are "clear, specific and adopted in regulations." They felt that neither the proposed regulations nor the

accompanying guidelines sufficiently addressed this issue. Specific concerns raised included:

- Lack of quantifiable standards for determining deficiencies,
- Lack of criteria for classifying severity of deficiencies, and
- Over-reliance on surveyor judgment.

Commenters stated that these types of problems raised doubts about the reliability of the new survey process when used by a number of different surveyors.

Response: This rule addresses HCFA's prescribed survey methodology and the related duties of the State survey agencies. It is not the appropriate vehicle for establishing regulatory standards of care for nursing homes. These new survey regulations, survey forms and guidelines are rooted in the current nursing home requirements, which are the conditions of participation for SNFs and standards for ICFs, which are found at 42 CFR Part 405, Subpart S, and Part 442, Subpart C. Within the parameters of the existing quality of care standards, we have provided surveyors with as much detailed guidance as possible for making determinations on facility compliance.

We recognize the need for increased objectivity in decisionmaking criteria in order to enhance the overall reliability of the survey process. That is why the new process requires that surveyors employ a highly structured survey methodology, including stratified sampling based on specific care needs, to better ensure that deficiency citations have a resident-specific basis. However, deficiency citation remains primarily a matter of surveyor judgment. Our long-range objective is to establish quantifiable norms and standards for use by surveyors on a national basis for determining deficiencies. We will pursue this goal through development of a standardized system for resident assessment that can provide the base-line data needed to make determinations regarding facility performance based on resident outcomes.

The proposed conditions of participation for long term care facilities (published in the *Federal Register* on October 16, 1987) would require annual resident assessments in all participating nursing facilities. This would facilitate the development of more objective criteria for deficiency determinations.

Comment: Three commenters supported our approach of publishing the survey forms and guidelines as appendices to the proposed rule rather than incorporating them in the regulations. Three other commenters felt

that the forms and guidelines should be in the regulations, with one of these commenters stating that the care guidelines impose requirements on facilities beyond the scope of the regulations. Finally, 15 State agencies expressed the belief that the court's order in *Smith v. Bowen* required the Secretary to publish the forms and guidelines as regulations. The State agencies did not take a position on this issue, except to agree that the care guidelines must be published as regulations to the extent that they "expand substantive regulatory requirements". They also raised the overall question of the legal status of the care guidelines.

Response: Our intent in the proposed rule was to set forth the survey forms and guidelines for public comment. In this final rule we are publishing, as part of the text of the regulations, the long term survey report forms, procedural guidelines, and care guidelines, as required by the court order.

Comment: Twenty-two commenters believed that there was a need to change the regulatory requirements for nursing homes, and many stated that the publication of new survey regulations was premature in view of the Department's proposed changes in the underlying regulatory requirements. Commenters pointed out that survey forms and guidelines would need to be revised in accordance with the new conditions of participation when the conditions are published as a final rule, and stated that the public should have an opportunity to participate in the refinement process.

Response: The publication of these survey regulations is in accordance with the court order in *Smith v. Bowen* of February 18, 1988. We agree that there is a need to revise the conditions of participation in the regulations and, as noted above, we have published proposed regulations to this effect. When the new conditions of participation are published as final regulations, we will make necessary refinements to the survey process, forms and guidelines. In order to ensure the greatest involvement of concerned parties, we intend to establish a work group consisting of representatives of all major involved parties to assist us in this process.

II. General Comments on Survey Methodology

The following comments are on the survey methodology as presented in the preamble discussion (pp. 24753-24758) and the appendices (pp. 24761-24888) to the proposed rule. The appendices

included the actual long term care survey forms, Parts A and B, the Care Guidelines, and the Procedural Guidelines.

A. Failure to Incorporate IoM Recommendations

Comment: Eighteen commenters indicated that the proposed changes in the survey system do not go far enough in implementing recommendations of the Institute of Medicine's 1986 report on quality of care in nursing homes. Specific concerns included:

- Failure to devise a two-stage survey approach (i.e., a short standard survey for all facilities, with an extended survey for facilities that performed poorly on "key indicators");
- Need to develop a standardized resident assessment system for use by nursing homes; and
- Lack of true outcome measurement in the new survey system.

Response: This final rule responds to the February 18, 1988 court order discussed above, and does not represent an end to our efforts to improve the survey process in line with IoM's recommendations.

OBRA '87 mandates the implementation of both a two-stage survey approach and standardized resident assessments by October 1, 1990. Over time, the standardized assessment data will provide the longitudinal, resident-specific information needed to incorporate true outcome measurement into the Federal quality assurance system.

B. Surveyor Training, Qualifications and Team Composition

Comment: Twenty-three commenters cited the importance of adequate surveyor training in using the new survey methodology. The majority of these commenters were State survey agencies and objected to HCFA's training approach, which relies on a group of Federally-trained surveyors from each State to train remaining surveyors. Other commenters suggested that HCFA should:

- Place increased training emphasis on resident rights issues and techniques for resident interviews;
- Establish basic and continuing education, and training requirements for surveyors;
- Increase HCFA's training program from 1 to 2 weeks and devote more time to uniform deficiency citation; and
- Make sure new surveyors are trained in Part A of the survey process (the administrative and procedural requirements).

Response: We do not have sufficient resources to provide direct Federal

training for approximately 3,000 long term care surveyors. We will develop and provide detailed materials and methodologies to States and Federal Regional Offices for training purposes. Included in these materials will be an instructor's manual, which will provide step-by-step directions on how to use the materials and implement the training programs. We will provide at least four sessions for survey agency and Regional Office personnel to instruct them on the new regulations and survey procedures and the use of the training materials. In response to the other suggestions on training:

- Techniques for resident interview will continue to be an integral part of training courses and training materials. We will focus more attention on resident rights when we train surveyors on the new regulations.
- Requirements for basic training are established. Each surveyor is required to complete a HCFA orientation program provided at the State level and to attend one of three HCFA basic courses depending on the surveyor's job responsibility. The opportunity for continuing education is provided through a series of specialty courses offered annually.
- In 1980, a 2-week basic training program was reduced to one week with the implementation of the new orientation program at the request of the State survey agencies. The new orientation program was designed to provide surveyors with information on specific regulatory requirements and survey procedures necessary to determine compliance with these regulations. The 1-week basic course is designed to teach and enhance skills necessary to conduct a comprehensive survey. The reduction from a 2-week to 1-week course was strongly urged by State agency directors.
- As part of the orientation program, new surveyors are trained in Part A of the survey process.

Comment: Twenty-six commenters addressed the closely related issues of surveyor qualifications and team composition. Nineteen commenters wanted HCFA to establish regulatory team composition requirements, with the most common suggestion being that teams include at least one registered nurse and other professional disciplines as appropriate. Other suggestions were that teams be multi-disciplinary, that a facility administrator be on each team, and that all surveyors be health professionals with "generalist" surveyors not permitted. Seven commenters recommended that HCFA establish minimum qualification requirements for surveyors, such as

professional credentials, geriatric education, training and experience requirements, and proficiency testing.

Response: We contract with the States to conduct long-term care surveys, through agreements established in accordance with section 1864(a) of the Social Security Act (the Act). These agreements provide the States with the discretionary power to set their own team composition and surveyor qualification standards. However, current survey guidelines specify that survey teams should consist of at least one registered nurse and other disciplines, as appropriate.

OBRA '87 requires minimum qualifications be established for individual surveyors and requires that multi-disciplinary survey teams include a registered professional nurse by October 1, 1990. We will make any changes in regulations, agreements with States, and procedures that are necessary to implement these provisions timely.

C. Coordination with Ombudsman

Comment: Twenty-one commenters urged us to require that State survey agencies consult with long-term care ombudsman programs prior to each survey. Some of these commenters also suggested that survey agencies be required to consult with State fraud control units and use available complaint information as standard parts of the survey process.

Response: We support the exchange of information between long term care ombudsman organizations and the State survey agencies. We will develop regulations to implement the OBRA '87 provision that, beginning October 1, 1990, requires each State survey agency to notify the State ombudsman of a survey finding of noncompliance with any Federal requirement.

HCFA's current complaint procedures already require that State agencies (1) investigate all complaints against Medicare or Medicaid certified facilities; and (2) in preparation for a survey, review any relevant information concerning the facility, including complaints. OBRA '87 also mandates that by October 1, 1990, each State ensure that its State Medicaid fraud and abuse control unit has access to all information of the State survey agencies. We believe that current procedures, combined with the OBRA '87 provision, will produce sufficient consultation and exchange of information between the State survey agencies and the fraud control units.

D. Coordination of Survey Process and Inspection of Care (IoC) Review

Comment: Of the twenty-one commenters who raised the issue of coordination of survey process and inspection of care review, eighteen felt that HCFA should require the integration of the two review processes on a national basis. They also urged that HCFA enforce the current requirement in 42 CFR 456.612(c) that Medicaid agencies share IoC data with survey agencies. Other commenters expressed the general need for more coordination between survey and IoC reviews, and one respondent stated that HCFA should mandate that the new survey process would suffice to meet a State's obligations to conduct IoC reviews.

Response: We have long supported the integration of the survey process with IoC reviews and have encouraged States to integrate the two processes. However, current law does not authorize us to require integration or to allow States to meet their IoC obligations via the survey process. Since Congress has provided in OBRA '87 that, effective October 1, 1990, States will no longer be required to conduct IoC reviews in SNFs and ICFs, further attempts by HCFA to pursue integration would be pointless. Finally, we believe that we are properly enforcing the data-sharing requirement in § 456.612(c), and we will do so as long as it remains in effect. We are not aware of any instance in which a Medicaid agency has refused to share IoC data with a survey agency.

E. State Experimentation

Comment: Sixteen commenters recommended that HCFA continue to permit States to carry out demonstrations or experiments of innovative survey approaches and incorporate findings from such experiments into the national survey process.

Response: We remain receptive to State proposals for innovative survey approaches. Approval of such proposals depends primarily on their potential for improving the survey process consistent with our long-term national objectives, such as the development of a two-stage survey process and the eventual establishment of longitudinal outcome norms that can provide a more objective means of measuring nursing home performance. The State of New York is now conducting a combined survey and IoC demonstration project. In addition, we are now in the process of selecting at least 5 States to participate in a large-scale demonstration project focusing on the integration of case-mix payment and

quality assurance systems in nursing homes. Nearly thirty States have expressed interest in this demonstration, which will undoubtedly have significant implications for the survey and certification process.

F. National Data Collection

Comment: Fifteen State agencies emphasized the importance of an automated national data system for collecting information from the new survey process. At the same time, they recommended that States be allowed exemptions from use of the forms as long as the States still collect all required information.

Response: Since we already have in place an automated national system for the collection of facility performance and aggregate resident data, the Medicare/Medicaid Automated Certification System, (MMACS), we assume that commenters are suggesting that an automated system is needed for the collection of data on individual residents. We are committed to the development of a national data base of this type as the end product of our efforts to collect standardized assessment information on all residents of certified nursing homes. However, to maintain a nationally uniform and consistent process and to preserve the integrity of the national data base, granting exemptions would pose serious problems in any attempt to use uniform national data for trend, fiscal, and research purposes.

G. Survey Agency Funding

Comment: Two consumer advocacy groups stated that the quality of the new survey system would depend largely on the allocation of sufficient additional resources to allow surveyors ample time to implement the new resident-centered process.

Response: We believe that resource allocations to the States are sufficient to allow surveyors to carry out the new survey process in the prescribed manner. In fiscal year 1987, we substantially raised all State allocations to accommodate an increase in the required size of the resident sample that surveyors must review.

H. Medicaid Discrimination

Comment: Four respondents, including three national consumer advocacy groups, noted that the new survey methodology fails to cover the issue of discrimination by nursing homes against Medicaid beneficiaries. They recommended that HCFA incorporate this issue into the survey process.

Response: HCFA agrees that the issue of possible discrimination against

Medicaid beneficiaries should be addressed to the extent possible in the survey process. The current survey process does investigate this area in the course of reviewing compliance with resident rights, transfer and discharge requirements, in addition to the complaint investigation procedures noted above. As these commenters recommended, however, changes to both the procedural and care guidelines are needed to ensure that this issue is more explicitly addressed in each nursing home survey. This can best be achieved by a consensus-based task force approach, which we plan to use in making additional revisions to the survey process rules after we issue a final rule that revises the conditions of participation.

I. Rights of Nursing Homes

Comment: Two commenters felt that the proposed regulations do not provide sufficient opportunity for nursing homes to disagree with and appeal survey findings. They suggested the establishment of a provider ombudsman and penalties against survey agencies for invalid surveys.

Response: These regulations specifically address the duties of the State survey agencies in carrying out certification surveys. Thus, this is not the appropriate forum for these recommendations. However, we believe that current Medicare and Medicaid regulations (most prominently 42 CFR Part 405, Subpart O and 42 CFR Part 442) provide nursing homes with full reconsideration and appeal rights.

J. Changes in Application of Surveys

Comment: One commenter recommended that HCFA allow deemed status to hospital-based SNFs accredited by the Joint Commission for Accreditation of Health Organizations, while another suggested that the new survey methodology be applied to swing bed hospitals.

Response: These issues are outside the scope of this rule.

K. Survey Focus Too Limited

Comment: Three respondents expressed the concern that the new survey's focus on resident outcomes is not sufficiently comprehensive. They believe that although surveyors are required to identify and assess the care of residents with conditions that are presumed to have poor outcomes (such as decubitus ulcers and contractures), surveyors are not instructed to look into the absence of good outcomes (such as increased functioning through physical therapy or other rehabilitation efforts).

Response: The focus of the survey process is on whether or not appropriate care is furnished to meet each resident's needs, including needs such as increased functioning whenever possible. Both the survey forms and guidelines address the absence of good outcomes as an issue for surveyor review, specifically under the areas of Restorative Nursing, Specialized Rehabilitative Services, Social Services, Activities and various Plan of Care requirements. We also implemented changes in the sampling methodology to ensure that the survey process does not focus too narrowly on the presence of negative outcomes.

L. Regulatory Impact

Comment: Two State provider organizations disputed our assessment in the proposed rule that the new survey process would not cause any additional economic burden on nursing homes. The commenters claimed that increased documentation requirements and deficiency "avoidance" and correction measures would be costly to facilities, with one commenter estimating increased costs at \$3-6 per patient day.

Response: Neither the new regulatory provisions nor the new survey methodology itself impose any new requirements on facilities. This final rule reflects current policy and procedures and would only serve to codify in regulations those practices that have already been implemented.

III. Technical Comments on the Content of the Survey Forms and Guidelines

A. Survey Report Form

Comment: We received about 160 suggestions for changes to the survey report forms. Listed below are the major issues that were raised and an overview of other types of suggestions:

- Standard-level deficiencies for both SNFs and ICFs should be identified as such throughout the survey report forms.
- Differing requirements for SNFs and ICFs need to be more clearly delineated on the forms.
- The Resident Census and Conditions of Residents section of the Part B form should be revised to include all the special care categories included in the procedures for selecting a resident sample.
- Individual survey report form items should be moved from Part A (review of administrative and procedural requirements) to Part B (review of requirements directly affecting resident care) or vice-versa.
- All or parts of the survey report form should be redesigned.

- Individual survey report form items need to be changed or added to the forms.

Response: As suggested by commenters, we have revised the forms by identifying standard-level deficiencies, clarifying which items pertain solely to SNFs or ICFs, and adding several care categories to the resident census section of the forms to correspond with the procedures for selecting a resident sample.

We have not transferred any survey report form items between Part A and Part B, nor have we made major changes in forms design at this time. The content and design of the Parts A and B forms were developed and refined through a lengthy process of work group meetings and field testing prior to implementation. We are deferring major forms design and content changes to coincide with the planned refinements in the overall survey process that will be necessitated in conjunction with the revised long term care conditions of participation and the new OBRA '87 requirements. HCFA again intends to use a work group approach to developing a refined survey process.

In considering the numerous suggestions for changes or additions to the forms, we accepted the following types of changes:

- Clarification of requirements—For example, in the section of the survey report form covering Resident Rights, Section C—Transfer and Discharge (F65-68), we amended the form to include the regulatory language regarding the timeframe for notification of residents prior to transfer.
- Omissions—For example, we added to the survey form several ICF standards dealing with dietary services, social services and activities that had been inadvertently omitted from the form.
- Corrections—For example, we changed the form to reflect a regulatory change for ICFs that requires that drug regimen reviews be conducted by a pharmacist rather than a registered nurse.

We did not make changes that would exceed or conflict with current regulatory requirements, such as the suggested addition of an item concerning whether each resident has received a complete annual physical examination. We are deferring for future consideration suggestions for items associated with new requirements likely to be included in the revised long term care conditions of participation (for example, elevate all resident rights requirements to standard level). Finally, we rejected suggestions that reflected incorrect understanding of the current

regulations or the survey report form itself.

B. Procedural Guidelines

Comment: We received approximately 150 suggestions for changes to the procedural guidelines. The procedural guidelines are a resource document that assists surveyors in applying the long term care survey process. Many of these suggestions paralleled recommendations regarding the proposed rule and the overall survey methodology and thus have been addressed in previous comments (for example, the issue of survey team composition or the recommendation that the requirement for entrance and exit conferences be deleted). Summarized below are the remaining major issues that were raised and an overview of suggestions for technical changes or language modifications:

- Selection of a Sample of Residents for Review. Commenters focused on the following concerns:
 - The increased sample size was unnecessary and burdensome to surveyors.
 - The sample selection methodology was confusing and the use of one of the sample selection options (Option B. Substitution) could destroy the representative nature of the sample.
 - Additional special care categories should be specified for inclusion in the targeted portion of the resident sample.
 - Use of Part A Survey Process. Several commenters, mainly consumer advocates, expressed the view that a full or partial Part A survey should be conducted on a regular basis. Suggestions included conducting Part A in all facilities on an annual basis, on a bi-annual basis, following a change in ownership or management, and whenever serious deficiencies are identified during the regular Part B or Life Safety Code surveys.
 - Resident Interviews—Commenters expressed strong support for the introduction of resident interviews into the survey process but also offered the following suggestions for improving the interview process:
 - Increase the average time suggested for interviews from 15 minutes to 30-60 minutes.
 - Emphasize to surveyors the importance of protecting the privacy of the resident during the interview.
 - Require that family members of residents be part of the interview process.
 - Technical Changes—Commenters had many suggestions for additions or

changes to the procedural guidelines that would either clarify the instructions to surveyors or make minor procedural changes in the survey process.

Response: Our responses to the above issues are as follows:

- **Selection of a Sample of Residents for Review.** The sample size and methodology prescribed in the procedural guidelines was based on extensive research conducted by Brown University, under contract to HCFA beginning in 1984, on how surveyor resources could be used most effectively to identify care deficiencies. The research clearly showed the increased statistical power of increasing the sample from a straight 10 percent to the present proportional system (with an average sample of approximately 20 percent), and we increased funding to the State survey agencies in accordance with the increased sample size requirement. We consulted with the work group of State, consumer and industry representatives, and they generally supported the increased sample size. No changes in the sample size were made based on the comments.

The refined methodology for selecting a resident sample, consisting of a primarily random approach with limited targeting of specified care categories, was also subjected to work group review prior to implementation. Based primarily on the comments of surveyors who used the new methodology in the field, we have changed the procedural guidelines to eliminate the "substitution" sampling option that surveyors found confusing and ineffective.

Finally, we have not added any new special care categories to the current list specified for targeted review. Without substantial further increases in surveyor funding, the addition of more such categories would jeopardize the representative nature of the primarily random sample. Since the specified care categories were developed based on current quality of care requirements, we will reconsider the list when we refine the survey process subsequent to the new nursing facility conditions of participation.

- **Use of Part A Survey Process.** The new survey process, as embodied in the Part B survey, was designed to focus inspections on direct resident care and the outcomes of that care rather than on the structural requirements contained in Part A. By discontinuing the regular review of many administrative and structural requirements (for example, bylaws, committee minutes), we were able to concentrate survey resources into the in-depth observation, interview and record review of individual

residents. This change in emphasis was advocated by providers, consumers and surveyors, and the efficacy of this approach was demonstrated by a series of State experiments carried out prior to the national implementation of the new survey process.

Conducting Part A surveys on a regular basis in all nursing facilities, in addition to the standard Part B survey and Life Safety Code inspections, would significantly increase the burden on both States and providers without any likelihood of improvement in direct care. Facilities must still comply with all Part A requirements, and surveyors are expected to verify compliance with administrative and structural requirements that may be associated with Part B deficiencies.

The new nursing facility conditions of participation are likely to include a significant consolidation in the type of administrative and structural requirements now contained in Part A. In the course of the subsequent survey refinement process, we will consult with a work group to determine how best to incorporate review of such requirements into the refined survey methodology.

- **Resident Interviews—Procedural guidelines** do not limit the length of interviews to 15 minutes, and surveyors are free to conduct extended interviews as necessary, if the resident does not object. However, we believe that, on the average, 15 minutes is sufficient for the surveyor to accomplish the purpose of the interview, particularly in view of the increased number of interviews now required under the revised method for determining sample size.

As suggested, we have changed the procedural guidelines to emphasize that each resident interview should be conducted in private, unless the resident specifically requests that another individual be present.

Lastly, it is not feasible to require that each resident's family member(s) be included in the interview process while still conducting surveys on an unannounced basis. Guidelines continue to instruct surveyors to converse with available family members of residents selected for in-depth review.

- **Technical Changes—**In considering the suggested technical changes, we generally accepted and made changes based on the following types of suggestions:

- Clarification of meaning.** For example, we added or revised language regarding the overall purpose of several process components and specified that the surveyor conducting the drug pass should be a pharmacist or a registered nurse. We also deleted

language that was interpreted as casting doubt on the veracity of information obtained through resident interviews.

- Corrections.** For example, we changed the time frame for submission of plans of correction to coincide with the State Operation Manual instructions.

We did not make changes that would result in redundancy or in unnecessarily reduced surveyor flexibility in conducting the survey. For example, we chose not to add a repeated discussion of the importance of observing resident and staff interactions and whether resident rights are respected to the section of the guidelines covering the drug pass, since the importance of these concerns had previously been stressed. Nor did we require that surveyors complete all resident observation and interview prior to beginning record reviews.

We also did not make changes when we received numerous directly conflicting comments on a particular issue. Two examples of such issues include whether or not facility staff should accompany surveyors on the facility tour and whether the dining and eating assistance observation should be consolidated or expanded. We believe these types of issues should be deferred to the planned work group for resolution.

C. Care Guidelines

Comment: Commenters submitted about 250 individual suggestions for changes to the care guidelines, which are extensive surveyor reference manuals containing examples of the types of information to be collected and reviewed by surveyors in order to make determinations regarding facility quality of care. The large majority of these suggestions involved modifications to the Dietary Services, Resident Rights and Nursing Services sections of the guidelines. Most of the remaining suggestions addressed minor technical changes in scattered portions of the guidelines. A few commenters raised general issues related to the care guidelines, including:

- The need to establish a task force or work group to discuss changes;
- Concern over the care guidelines exceeding regulatory requirements; and
- The importance of using open-ended interview questions and not incorporating a negative bias into the guidelines.

Response: The care guidelines are intended as a resource document to assist surveyors in applying the long term care survey process. Unlike the survey report forms or the procedural

guidelines, the care guidelines do not represent prescriptive or comprehensive instructions to surveyors. Instead, the care guidelines provide common examples of the types of information surveyors should review in order to make determinations on facility compliance with quality of care standards. Our review and disposition of the comments on the care guidelines were based on this understanding of the limited purpose and scope of the guidelines.

The first criterion we used in considering comments was consistency with the existing regulations and law. We made changes to the guidelines based on suggestions that helped make the guidelines more consistent with the regulations; we rejected changes that would result in the guidelines exceeding or conflicting with regulatory requirements. For example:

- We added suggested interview questions regarding mail delivery and the receipt of phone calls, based on compatibility with the resident rights regulations.
- We added a recommendation that surveyors should check whether information regarding the use of restraints is contained in nursing notes and the medical record, based on consistency with medical record requirements.
- We did not add suggested language instructing surveyors to verify whether the pharmacist notified the dietary department of adverse food or drug interactions; although this may be a desirable standard of practice, it is not a regulatory requirement.
- As suggested, we modified a reference to the "posting" of resident rights, because regulations require only that residents be informed of their rights and that the resident rights policy be available.

A second criterion that we applied in assessing the commenters' suggestion was whether each suggestion conformed with the intended scope of the guidelines. Thus, we had to weigh the value of providing additional guidance to the surveyor against the drawbacks of becoming too prescriptive, too simplistic for the target audience of surveyors, or so all-inclusive as to be unmanageably large for ready use by surveyors. For example:

- We added suggested observation items, interview questions, record review items and evaluation factors in a number of areas associated with specific special care categories reviewed during a survey, including catheters, bowel/bladder training, colostomy, parenteral fluids/IVs, tracheostomy, tube feeding, and physical and chemical restraints.

- We did not add suggested descriptions of the various types of exercises that should be provided to residents upon release from different kinds of physical restraints.

- We added suggested interview questions regarding the availability of activities to bedfast residents and the degree of choice provided to residents in such matters as clothing, meals, bathing schedule, etc.

- We did not believe it necessary to instruct surveyors to take into consideration time of day or recent activities when assessing the appropriateness of resident grooming or hygiene or to provide a definition of the term "clinical study".

Throughout the care guidelines, we attempted to incorporate suggested changes that would make interview questions more open-ended or that would eliminate a perceived negative bias from interview questions. We also adopted suggestions that we delete or rephrase interview questions that would tend to undermine a resident's confidence in the facility or would call on a resident to comment on the care provided to another resident. We did not accept suggestions that were not in keeping with the outcome-oriented nature of the survey process, such as instructing surveyors to review committee minutes, policy manuals or other written administrative materials.

As noted previously, we believe that many of the suggestions and issues raised by the commenters should be deferred to a work group of regulators, industry representatives, health professionals, and consumer advocates for resolution. With respect to the care guidelines, we believe that the work group approach is particularly suitable for the many clinical practice issues that were raised. In the Dietary Services area, for example, most of the suggestions we received consisted of often conflicting views on the proper nutritional standards that surveyors should be using in assessing resident meals and nutrition plans. Such aspects of the care guidelines were developed and refined via a consensus-based process, and we believe that the same approach should be applied to their continuing evolution.

Revisions to the Regulations

We are adopting as final the proposed rule published in the *Federal Register* July 1, 1987 at 52 FR 24752 with the following modifications:

- We are revising the Medicaid regulations, § 442.30(a)(5)(ii), to clarify that surveyors will observe not only the actual provision of care and services to

residents, but also the effects of that care.

- We are revising § 442.30(a)(4) by removing the specific reference to a section of the State Operations Manual.

- We are redesignating the content of Part 405, Subpart S, Certification Procedure for Providers and Suppliers of Services, to new Part 448, Subparts A and B. As part of our plan to make the Code of Federal Regulations easier to use, we are redesignating Subpart S of Part 405 as Part 488, Subparts A and B. This redesignation merely transfers the existing content of Subpart S to Part 488 without substantive change. We have made only technical changes including revised cross-references.

- We are revising the Medicare regulations at redesignated § 488.26(b)(2) (formerly § 405.1906) to clarify that surveyors will observe not only the actual provision of care and services to residents, but also the effects of that care.

- We are revising redesignated § 488.26(c) by removing the specific reference to a section of the State Operations Manual.

- We are revising redesignated § 488.26(e)(8) (formerly § 405.1906) to provide that follow-up surveys are conducted "as appropriate" to conform to the wording of § 442.30(a)(7)(viii).

- In Part 488, Subpart C, we are adding § 488.100 to include the long term care survey forms, Part A.

- We are adding § 488.105 to Subpart C to include the long term care survey forms, Part B.

- We are adding § 488.110 to Subpart C to include the Procedural guidelines used in long term care surveys.

- We are adding § 488.115 to Subpart C to set forth the Care guidelines used to survey facilities.

Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on innovation, or on the ability of United States-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed

regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all long-term care facilities as small entities.

This final rule reflects current policy and procedures and would only serve to codify in regulations those practices which have already been implemented. This rule would not establish any incremental economic burden beyond those currently experienced by long-term care facilities.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

Paperwork Reduction Act of 1980

Sections 488.100, 488.105, 488.110 and 488.115 of this final rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we are submitting the forms and guidelines to the Executive Office of Management and Budget (EOMB) for its review. Other organizations and individuals desiring to submit comments on the information collection requirements should send them to: Allison Herron, Desk Officer for HCFA, Office of Information and Regulatory Affairs, Room 3002, New Executive Building, Washington, DC 20503.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

REDESIGNATION TABLE—Continued

Old section	New section
405.1901(d).....	488.05
405.1901(e).....	488.06
405.1901(q).....	488.08
405.1902(a).....	488.10
405.1902(b).....	488.11
405.1902(c).....	488.12
405.1902(d).....	488.14
405.1903.....	488.18
405.1904.....	488.20
405.1905.....	488.24
405.1906.....	488.26
405.1907.....	488.28
	Subpart B
405.1908.....	488.50
405.1909.....	488.52
405.1910.....	488.54
405.1911.....	488.56
405.1912.....	488.60
405.1913.....	488.64
	Subpart C
	488.100
	488.105
	488.110
	488.115

42 CFR Chapter IV is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER E—STANDARDS AND CERTIFICATION

A. A new Part 488 is established under Subchapter E, to read as follows:

PART 488—SURVEY AND CERTIFICATION PROCEDURES

Subpart A—General Provisions

Sec.

- 488.1 Definitions.
- 488.3 Conditions of participation: Conditions for coverage.
- 488.5 Effect of JCAHO or AOA accreditation.
- 488.6 Validation survey.
- 488.8 Civil rights requirements.
- 488.10 State survey agency review: Statutory provisions.
- 488.11 State survey agency functions.
- 488.12 Effect of survey agency certification.
- 488.14 Effect of PRO review.
- 488.18 Documentation of findings.
- 488.20 Periodic review of compliance and approval.
- 488.24 Certification of noncompliance.
- 488.26 Determining compliance.
- 488.28 Providers of suppliers with deficiencies.

Subpart B—Special Requirements

- 488.50 Special requirements applicable to skilled nursing facilities with deficiencies.
- 488.52 Special requirements applicable to independent laboratories.
- 488.54 Temporary waivers applicable to hospitals.
- 488.56 Temporary waivers applicable to skilled nursing facilities.

- 488.60 Special procedures for approving end-stage renal disease facilities.
- 488.64 Remote facility variances for utilization review requirements.

Subpart C—Survey Forms and Procedures

- 488.100 Long term care survey forms, Part A.
- 488.105 Long term care survey forms, Part B.
- 488.110 Procedural guidelines.
- 488.115 Care guidelines.

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

Subpart A—General Provisions

§ 488.1 Definitions.

As used in this part—

Accredited hospital means a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations or by the American Osteopathic Association.

Act means the Social Security Act. AOA stands for the American Osteopathic Association.

Certification is a recommendation made by the State survey agency on the compliance of providers and suppliers with the conditions of participation and conditions of coverage.

Full review means a survey of a hospital for compliance with all conditions of participation for hospitals.

JCAHO stands for the Joint Commission on Accreditation of Healthcare Organizations.

Provider of services or provider means a hospital, skilled nursing facility, home health agency, hospice, comprehensive outpatient rehabilitation facility, or provider of outpatient physical therapy or speech pathology services.

State includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

State survey agency means the State health agency or other appropriate State or local agency used by HCFA to perform survey and review functions for Medicare.

Substantial allegation means a complaint which reflects on the health and safety of patients and raises doubts as to a hospital's compliance with the conditions of participation.

Supplier means any of the following: independent laboratory; portable X-ray services; physical therapist in independent practice; ESRD facility; rural health clinic; or chiropractor.

§ 488.3 Conditions of participation; Conditions for coverage.

(a) **Basic rules.** In order to be approved for participation in or

REDESIGNATION TABLE

Old section	New section
Part 405	Part 488
Subpart S	Subpart A
405.1901(a).....	488.01
405.1901 (b) and (c).....	488.03

coverage under the Medicare program, a prospective provider or supplier must:

(1) Meet the applicable statutory definition in section 1861 or section 1881 of the Act; and

(2) Be in compliance with the applicable conditions prescribed in Subpart K, L, M, N, Q, or U of Part 405, Subpart C of Part 418, Part 482, or Subpart A of Part 491 of this chapter.

(b) *Special Conditions.* (1) The Secretary, after consultation with the JCAHO or AOA, may issue conditions of participation for hospitals higher or more precise than those of either those accrediting bodies.

(2) The Secretary may, at a State's request, approve health and safety requirements for providers and suppliers in that State, which are higher than those otherwise applied in the Medicare program.

(3) If a State or political subdivision imposes higher requirements on institutions as a condition for the purchase of health services under a State Medicaid Plan approved under Title XIX of the Act, (or if Guam, Puerto Rico, or the Virgin Islands does so under a State plan for Old Age Assistance under Title I of the Act, or for Aid to the Aged, Blind, and Disabled under the original Title XVI of the Act), the Secretary is required to impose similar requirements as a condition for payment under Medicare in that State or political subdivision.

§ 488.5 Effect of JCAHO or AOA accreditation.

Institutions accredited as hospitals by the JCAHO or AOA are deemed to meet all of the Medicare conditions of participation for hospitals, except:

(a) The requirement for utilization review as specified in section 1861(e)(6) of the Act and in § 482.30 of this chapter.

(b) The additional special staffing and medical records requirements that are considered necessary for the provision of active treatment in psychiatric hospitals (section 1861(f) of the Act) and implementing regulations; and

(c) Any requirement under section 1861(e) of the Act and implementing regulations which the Secretary, after consulting with JCAHO or AOA, identifies as being higher or more precise than the requirements for accreditation (section 1865(a)(4) of the Act).

§ 488.6 Validation survey.

(a) *Basis for survey.* HCFA may require a survey of an accredited hospital to validate the JCAHO or AOA accreditation process. These surveys will be conducted on a selective-sample

basis, or in response to substantial allegations of significant deficiencies.

(b) *Effect of selection for survey.* A hospital selected for a validation survey must: (1) Authorize its accrediting body to release to HCFA or the State survey agency (on a confidential basis for JCAHO hospitals), a copy of the hospital's current accreditation survey. (For the rules on confidentiality, see 42 CFR 401.126;

(2) Authorize carrying out the validation survey; and

(3) Authorize its accrediting body to release periodic status reports to HCFA on correction of deficiencies when HCFA and the accrediting body agree that the latter will monitor the correction deficiencies.

(c) *Refusal to cooperate with survey.* If a hospital selected for a validation survey fails to comply with the requirements specified in paragraph (b) of this section, it will no longer be deemed to meet the Medicare conditions of participation but will be subject to full review by the State survey agency in accordance with § 488.11 and may be subject to termination of its provider agreement under § 489.53 of this chapter.

(d) *Consequences of finding of non-compliance.* (1) If a validation survey results in a finding that the hospital is out of compliance with one or more conditions of participation and a significant deficiency is determined to exist, the hospital will no longer be deemed to meet the conditions of participation. Specifically, the hospital will be subject to the requirements applied to unaccredited hospitals that are found out of compliance following a State agency survey under § 488.28, and to full review by a State agency survey in accordance with § 488.11.

(2) A significant deficiency will be determined not to exist if:

(i) The accrediting body accepts the State survey agency finding of deficiencies and agrees to monitor the correction of the deficiencies in accordance with specified time frames; and

(ii) The State survey agency is unable to justify to HCFA the need for continued full review by the State survey agency to assure correction of deficiencies; and

(iii) The accrediting body provides HCFA with periodic reports of progress toward corrections.

(e) *Reinstating effect of accreditation.* An accredited hospital will be once again deemed to meet the Medicare conditions of participation in accordance with this section if:

(1) It withdraws any prior refusal to authorize its accrediting body to release

a copy of the hospital's current accreditation survey;

(2) It withdraws any prior refusal to allow a validation survey;

(3) It withdraws any prior refusal to authorize its accrediting body to release periodic status reports on correction progress; and

(4) HCFA finds that the hospital meets all the Medicare conditions of participation.

(f) *Informal administrative review.* (1) An accredited hospital which is dissatisfied with a finding that it is not in compliance with a condition of participation, or a finding that it is no longer deemed to meet the conditions of participation, is entitled to an informal administrative review.

(2) The hospital must request informal review in writing within 15 days of the date it received HCFA's notice of the finding.

(3) The request should state why the finding is considered incorrect and should be accompanied by any supporting evidence and arguments.

§ 488.8 Civil rights requirements.

Providers must meet the requirements of:

(a) Title VI of the Civil Rights act of 1964, as implemented by 45 CFR Part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or the subject to discrimination under, any program or activity receiving Federal financial assistance (section 601);

(b) Section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR Part 84, which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance; and

(c) Other pertinent requirements made by the Office of Civil Rights of the Department of Health and Human Services.

§ 488.10 State survey agency review: Statutory provisions.

(a) Section 1864(a) of the Act requires the Secretary to enter into an agreement with any State that is able and willing to do so, under which appropriate State or local survey agencies will determine whether:

(1) Providers or prospective providers meet the Medicare conditions of participation;

(2) Suppliers meet the conditions for coverage; and

(3) Rural health clinics meet the conditions of certification.

(b) Section 1865(a) of the Act provides that if an institution is accredited as a hospital by the JCAHO, it will be deemed to meet the conditions of participation:

(1) Except those specified in § 488.5;

(2) Provided that such hospital, if it is included within a validation survey, authorizes the JCAHO to release to HCFA (on a confidential basis) upon request a copy of the most current JCAHO accreditation survey.

(c) Section 1864(c) of the Act authorizes the Secretary to enter into agreements with State survey agencies for the purpose of conducting validation surveys in hospitals accredited by the JCAHO. Section 1865(b) provides that an accredited hospital which is found after a validation survey to have significant deficiencies related to the health and safety of patients will no longer be deemed to meet the conditions of participation.

(d) Section 1865(a) of the Act also provides that if the Secretary finds that accreditation of an institution or agency by the AOA or any other national accreditation body provides reasonable assurance that any or all of the

conditions of participation are met, the Secretary may treat such institution as meeting the conditions of participation. The Secretary has found that the accreditation of hospitals by the AOA provides such reasonable assurance, and has extended the same procedures applicable to JCAHO accredited hospitals to AOA accredited hospitals.

§ 488.11 State survey agency functions.

State and local agencies that have agreements under section 1864(a) of the Act—

(a) Survey and make recommendations regarding the issues listed in § 488.10;

(b) Conduct validation surveys as provided in § 488.6;

(c) Perform other surveys and other appropriate activities and certify their findings to HCFA; and

(d) Review statements obtained from each SNF, setting forth (from payroll records) the average numbers and types of personnel (in full-time equivalents) on each tour of duty during at least 1 week of each quarter, such week to be selected by the survey agency and to occur irregularly in each quarter of the year.

§ 488.12 Effect of survey agency certification.

Certifications by the State survey

agency represent recommendations to HCFA.

(a) On the basis of these recommendations, HCFA will determine whether:

(1) A provider or supplier is eligible to participate in or be covered under the Medicare program; or

(2) An accredited hospital is deemed to meet the Medicare conditions of participation or is subject to full review by the State survey agency.

(b) Notice of HCFA's determination will be sent to the provider or supplier.

§ 488.14 Effect of PRO review.

When a PRO is conducting review activities under section 1154 of the Act and Part 466 of this chapter, its activities shall be in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act and will also be in lieu of survey, compliance and assistance activities required of State survey agencies under section 1864(a) with respect to those sections.

Subpart C—Survey Forms and Procedures

BILLING CODE 4120-01-M

§ 488.100 Long term care survey forms, Part A.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATIONFORM APPROVED
OMB NO. 0938-0400

PART A — ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

MEDICARE / MEDICAID SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SURVEY REPORT

PROVIDER NUMBER

FACILITY NAME AND ADDRESS (City, State, Zip Code)

VENDOR NUMBER

SURVEY DATE

SURVEYORS' NAMES

TITLES

Form HCFA-525 (2-86)

Page 1

NAME OF FACILITY

NAME OF FACILITY

CODE	COMPLIANCE WITH STATE AND LOCAL LAWS	YES	NO	N/A	EXPLANATORY STATEMENT
	Compliance with State and Local Laws (Condition of Participation)				
F500	SNF (405.1120) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	A. Licensure				
F501	SNF (405.1120(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F502	ICF (442.251) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F503	The facility has a current State License (Number _____)				
	B. Personnel Licensure				
F504	SNF (405.1120(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F505	ICF (442.302) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F506	Staff of the facility are licensed or registered in accordance with applicable State laws.				
	C. Compliance with Other Laws				
F507	SNF (405.1120(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F508	ICF (442.252) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F509	ICF (442.315) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F510	The facility is in compliance with applicable Federal, State and local laws and regulations relating to fire and safety, sanitation, communicable and reportable diseases, postmortem procedures and other relevant health and safety requirements.				

Form HCFA-525 (2-86)

Page 2

NAME OF FACILITY

CODE	COMPLIANCE WITH STATE AND LOCAL LAWS/ GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	The facility is in compliance with applicable regulations pertaining to:				
F511	Buying, dispensing, safeguarding, administering, and disposing of medications and controlled substances. Exception: Not applicable to SNFs.				
F512	Construction, maintenance and equipment. Exception: Not applicable to SNFs.				
F513	Current reports from all responsible governmental agencies are retained at the facility.				
F514	Governing Body and Management (Condition of Participation) SNF (405.1121) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has a governing body with full legal authority and responsibility for operation of the facility.				
F515	A. Disclosure SNF (405.1121(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Full disclosure of ownership has been made in accordance with requirements at 42 CFR 420.206.				
F516	B. Administration SNF (405.1121(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F517	1. Written bylaws address the operation of the facility.				
F518	2. Written bylaws and policies address effective resident care.				
F519	3. Bylaws are reviewed and revised as necessary.				

Form HCFA-525 (2-86)

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F520	ICF (442.301) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F521	C. Independent Medical Review SNF (405.1121(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has policies which ensure that the facility cooperates in an effective program for regular independent medical evaluation and audit of residents in the facility to the extent required by the programs in which the facility participates.				
F522	D. Administrator SNF (405.1121(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F523	ICF (442.303) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F524	The facility has a licensed administrator who has authority for the overall operation of the facility. (Administrator's license or registration number _____).				
F525	E. Resident Care Director ICF (442.304) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F526	1. The administrator or another professional staff member is the resident care director (RSD).				
F527	2. The RSD coordinates and monitors each resident's care.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	F. Institutional Planning				
F528	SNF (405.1121(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F529	1. The facility has an overall plan and budget prepared by a committee of representatives from the governing body, administrative staff, and the organized medical staff (if any).				
F530	2. The overall plan and budget is reviewed and updated at least annually.				
F531	3. The plan includes a capital expenditures plan, if necessary.				
	G. Personnel Policies and Procedures				
F532	SNF (405.1121(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	1. The facility has written policies and procedures that support sound resident care and personnel practices and address, at least:				
F533	a. Control of communicable disease;				
F534	b. The review of employee incidents and accidents to identify health and safety hazards; and				
F535	c. The existence of a safe and sanitary environment.				
F536	2. Personnel records are current, available to each employee, and contain sufficient information to support placement in the position to which assigned.				
F537	3. Referral or provision for periodic health examinations to ensure freedom from communicable disease.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
H. Outside Resources/Consultant Agreements					
F538	SNF (405.1121(i)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F539	ICF (442.317) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F540	The facility has written agreements with qualified persons to render a service (if it does not employ a qualified professional person to do so). The agreements:				
F541	1. Address the responsibilities, functions, objectives, and terms (including financial arrangements and charges);				
F542	2. Are signed by an authorized representative of the facility and the outside resource; and				
F543	3. Specify that the facility retains ultimate responsibility for the services rendered.				
I. Notification of Change in Resident Status					
F544	SNF (405.1121(j)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F545	The facility has policies and procedures to notify physicians and other responsible persons in the event of an accident involving the resident, or resident's physical, mental or emotional status, or resident charges, billings or related administrative matter.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	J. Resident Rights				
F546	SNF (405.1121(k)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators 1 thru 12 apply to SNFs.				
F547	ICF (442.311) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	1. Information				
F548	a. The facility informs each resident, before or at the time of admission, of his rights and responsibilities.				
F549	b. The facility informs each resident, before or at the time of admission, of all rules governing resident conduct.				
F550	c. The facility informs each resident of amendments to their policies on residents' rights and responsibilities and rules governing conduct.				
F551	d. Each resident acknowledges in writing receipt of residents' rights information and any amendment to it.				
F552	e. The resident must be informed in writing of all services and charges for services.				
F553	f. The resident must be informed in writing of all changes in services and charges before or at the time of admission and on a continuing basis.				
F554	g. The resident must be informed of services not covered by Medicare or Medicaid in the basic rate.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	2. Medical Condition and Treatment				
F555	a. Each resident is informed by a physician of his health and medical condition unless the physician decides that informing the resident is medically contraindicated.				
F556	b. Each resident is given an opportunity to participate in planning his total care and medical treatment.				
F557	c. Each resident is given an opportunity to refuse treatment.				
F558	d. Each resident gives informed, written consent before participating in experimental research.				
F559	e. If the physician decides that informing the resident of his health and medical condition is medically contraindicated, the physician has documented this decision in the resident's medical record.				
	3. Transfer and Discharge				
	Each resident is transferred or discharged only for:				
F560	a. Medical reasons.				
F561	b. His/her welfare or that of other residents.				
F562	c. Nonpayment except as prohibited by the Medicare or Medicaid program.				
	4. Exercising Rights				
F563	a. Each resident is encouraged and assisted to exercise his/her rights as a resident of the facility and as a citizen.				
F564	b. Each resident is allowed to submit complaints and recommendations concerning the policies and services of the facility to staff or to outside representatives of the resident's choice or both.				
F565	c. Such complaints are submitted free from restraint, coercion, discrimination, or reprisal.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	5. Financial Affairs				
F566	a. Residents are allowed to manage their own personal financial affairs.				
F567	b. The facility establishes and maintains a system that assures full and complete accounting of residents' personal funds. An accounting report is made to residents in skilled nursing facilities at least on a quarterly basis.				
F568	c. The facility does not commingle resident funds with any other funds other than resident funds.				
F569	d. If a resident requests assistance from the facility in managing his personal financial affairs, resident's delegation is in writing.				
	e. The facility system of accounting includes written receipts for:				
F570	1. All personal possessions and funds received by or deposited with the facility.				
F571	2. All disbursement made to or for the resident.				
F572	f. The financial record must be available to the resident and his/her family.				
	6. Freedom from Abuse and Restraints				
F573	a. Each resident is free from mental and physical abuse.				
F574	b. Chemical and physical restraints are only used when authorized by a physician in writing for a specified period of time or in emergencies.				
F575	c. If used in emergencies, they are necessary to protect the resident from injury to himself or others.				

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NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F576	d. The use is authorized by a professional staff member identified in the written policies and procedures of the facility.				
F577	e. The use is reported promptly to the resident's physician by the staff member.				
	7. Privacy				
F578	a. Each resident is treated with respect, consideration and full recognition of his/her dignity and individuality.				
F579	b. Each resident is given privacy during treatment and care of personal needs.				
F580	c. Each resident's records, including information in an automated data bank, are treated confidentially.				
F581	d. Each resident must give written consent before the facility releases information from his/her record to someone not otherwise authorized to receive it.				
F582	e. Married residents are given privacy during visits by their spouses.				
F583	f. Married residents are permitted to share a room.				
	8. Work				
F584	No resident may be required to perform services for the facility.				
	9. Freedom of Association and Correspondence				
F585	a. Each resident is allowed to communicate, associate and meet privately with individuals of his choice unless this infringes upon the rights of another resident.				
F586	b. Each resident is allowed to send and receive personal mail unopened.				

NAME OF FACILITY		GOVERNING BODY AND MANAGEMENT		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
F587	10. Activities Each resident is allowed to participate in social, religious, and community group activities.						
F588	11. Personal Possessions Each resident is allowed to retain and use his personal possessions and clothing as space permits.						
F589	12. Written Policies and Procedures: Delegation of Rights and Responsibilities ICF (442.312) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F590	a. The facility has written policies and procedures that provide that all the rights and responsibilities of a resident pass to the resident's guardian, next of kin or sponsoring agency or agencies if the resident is adjudicated incompetent under State law or is determined by his physician to be incapable of understanding his rights and responsibilities.						
F591	b. Physician determinations of incapability and the specific reasons thereof are recorded by the physician in the resident's record.						
F592	K. Resident Care Policies SNF (405.1121(i)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F593	1. The facility has written policies to govern the continuing skilled nursing care and related medical or other services provided.						
F594	2. These policies reflect awareness of and provision for meeting the total medical and psychosocial needs of residents including admission, transfer, discharge planning, and the range of services available to residents; and						

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F595	3. The protection of residents' personal and property rights.				
F596	4. The policies are developed by a group of professional personnel, including the Medical Director or the organized medical staff, and are periodically reviewed and revised (if necessary).				
F597	5. These policies are available to admitting physicians, sponsoring agencies, residents, and the public.				
F598	6. The Medical Director or a registered nurse is designated as responsible for the execution of the policies.				
	L. Public Availability				
F599	ICF (442.305) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F600	1. The facility has written policies and procedures governing all the services it provides.				
F601	2. The policies and procedures are available to the staff and residents, members of the family, the public, and legal representatives of residents.				
	M. Admissions				
F602	ICF (442.306) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	The facility has written policies and procedures that ensure that it admits as residents only those residents whose needs can be met by:				
F603	1. the facility itself.				
F604	2. the facility in cooperation with community resources.				
F605	3. the facility in cooperation with other providers of care affiliated with or under contract to the facility.				

NAME OF FACILITY		GOVERNING BODY AND MANAGEMENT		YES	NO	N/A	EXPLANATORY STATEMENT
N. Transfers							
F606	ICF (442.307) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F607	1. The facility has written policies and procedures to ensure that residents are transferred promptly to a hospital, SNF or other appropriate facility when a change is necessary.						
F608	2. Except in emergencies, the facility consults the resident, his next of kin, the attending physician, and the responsible agency, if any, at least five days before discharge.						
F609	3. The facility uses casework services and other means to ensure that adequate arrangements are made to meet resident's needs through other resources.						
O. Restraints							
F610	ICF (442.308) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F611	The facility has written policies and procedures that:						
	1. Define the uses of chemical and physical restraints.						
F612	2. Identify the professional personnel who may authorize the use of restraints in emergencies under 442.311(f).						
F613	3. Describe procedures for monitoring and controlling the use of these restraints.						
P. Complaints							
F614	ICF (442.309) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F615	The facility has written policies and procedures that:						
	1. Describe the procedures the facility uses to receive complaints and recommendations from residents.						
F616	2. Ensure that the facility responds to complaints and recommendations.						

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	Q. Staff Development				
F617	SNF (405.1121(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F618	ICF (442.314) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F619	1. The facility conducts an orientation program for all new employees that includes a review of all its policies.				
F620	2. The facility plans and conducts an inservice staff development program for all personnel to assist them in developing and improving their skills.				
F621	3. The facility maintains a record of the orientation and staff development programs it conducts.				
F622	4. The record includes the content of the program and the names of participants.				
F623	5. Inservice training includes at least prevention and control of infections, fire prevention and safety, confidentiality of resident information, and preservation of resident dignity including protection of resident's privacy and personal and property rights.				

NAME OF FACILITY

CODE	MEDICAL DIRECTION	YES	NO	N/A	EXPLANATORY STATEMENT
	Medical Direction (Condition of Participation)				
F624	SNF (405.1122) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has a written agreement with a licensed physician to serve as Medical Director on a part-time or full-time basis as is appropriate to the needs of the residents and the facility. (See 405.1911(b) regarding waiver of this requirement.)				
	A. Coordination of Medical Care				
F625	SNF (405.1122(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F626	1. Medical direction and coordination of medical care in the facility are provided by a Medical Director.				
F627	2. The Medical Director is responsible for development of policies approved by the governing body.				
F628	3. Coordination of medical care includes liaison with attending physicians to ensure their writing orders promptly upon admission of a resident, and periodic evaluation of the adequacy and appropriateness of health professional and supportive staff and services.				
	B. Responsibilities to the Facility				
F629	SNF (405.1122(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F630	1. The Medical Director is responsible for surveillance of the health status of the facility's employees.				
F631	2. Incidents and accidents that occur on the premises are reviewed by the Medical Director to identify hazards to health and safety.				

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CODE	PHYSICIAN SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	Physician Services (Condition of Participation)				
F632	SNF (405.1123) Residents in need of skilled or rehabilitative care are admitted to the facility only upon the recommendation of, and remain under the care of, a physician. To the extent feasible, each resident designates a personal physician.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	A. Physician Supervision				
F633	SNF (405.1123(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F634	ICF (442.346) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F635	1. The facility has a policy that the health care of every resident must be under the supervision of a physician.				
F636	2. All attending physicians must make arrangements for the medical care of their residents in their absence.				
	B. Emergency Services				
F637	SNF (405.1123(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has written procedures available at each nurses' station, that provide for having a physician available to furnish necessary medical care in case of emergency.				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F638	Nursing Services (Condition of Participation) SNF (405.1124) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty, 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all residents (See 405.1911(a) regarding waiver of the 7-day registered nurse requirement).				
F639	ICF (442.342) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility provides nursing care as needed including restorative nursing care.				
F640	A. Director of Nursing Services SNF (405.1124(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F641	1. The director of nursing services is a qualified registered nurse employed full-time.				
F642	2. The director of nursing services has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and serves only one facility in this capacity.				
F643	3. If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as assistant so that there is the equivalent of a full-time director of nursing services on duty.				

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CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Health Services Supervision				
F644	ICF (442.339) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F645	1. The facility has a full-time registered nurse, or a licensed practical or vocational nurse to supervise the health services 7 days a week on the day shift.				
F646	2. The nurse has a current State license.				
F647	3. If the supervisor of health services is a licensed practical or vocational nurse, the facility has a formal contract with a registered nurse to serve as a consultant no less than 4 hours a week.				
F648	4. To qualify to serve as a health services supervisor, a licensed practical or vocational nurse must: a. Have graduated from a State-approved school of practical nursing, or				
F649	b. Have education or other training that the State authority responsible for licensing practical nurses considered equal to graduation from a State-approved school of practical nursing, or				
F650	c. Have passed the Public Health Service examination for waived licensed practical or vocational nurses.				
F651	5. If the nurse in charge is licensed by the State in a category other than registered nurse or licensed practical or vocational nurse: a. The individual has completed a training program to get the license that includes at least the same number of classroom and practice hours in all nursing subjects as in the program of a State-approved school of practical or vocational nursing, and				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F652	b. The State agency responsible for licensing the individual submits a report to the Medicaid agency comparing State-licensed practical nurse or vocational nurse course requirements with those for the program completed by the individual.				
	C. Twenty-four Hour Nursing Service				
F653	SNF (405.1124(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F654	ICF (442.338) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F655	1. 24-Hour Nursing Nursing policies and procedures address the total nursing needs of the residents.				
F656	The policies are designed to ensure that each resident receives: Treatment.				
F657	Medications as prescribed.				
F658	Diet as prescribed.				
F659	Rehabilitative nursing care as needed.				
F660	Proper care to prevent decubitus ulcers and deformities.				
F661	Proper care to ensure that residents are clean, well-groomed and comfortable.				
F662	Protection from accident and injury.				
F663	Protection from infection.				
F664	Encouragement, assistance, and training in self-care and group activities.				

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CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F665	2. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel including relief personnel, who worked on each unit for each tour of duty.				
	D. Rehabilitative Nursing Care				
F666	SNF (405.1124(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F667	Nursing personnel are trained in rehabilitative nursing.				
	E. Supervision of Resident Nutrition				
F668	SNF (405.1124(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F669	A procedure is established to inform dietetic service of physicians' diet orders and of residents' dietetic problems.				
	F. Administration of Drugs				
F670	SNF (405.1124(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F671	Procedures are established by the Pharmaceutical Services Committee (see 405.1127(d)) to ensure that drugs are checked against physicians' orders.				
	G. Conformance with Physicians' Drug Orders				
F672	SNF (405.1124(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators 1 thru 4 apply to SNFs.				
F673	ICF (442.335) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F674	1. Drugs not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies.				

NAME OF FACILITY		NURSING SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
F675	2. The attending physician is notified of an automatic stop order prior to the last dose so that the physician may decide if the administration of the drug or biological is to be continued or altered.						
F676	ICF (442.334) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F677	3. Physicians' verbal orders for drugs are given only to a licensed nurse, pharmacist, or physician and are immediately recorded and signed by the person receiving the order. (Verbal orders for Schedule II drugs are permitted only in the case of a bona fide emergency situation.)						
F678	4. Such orders are countersigned by the attending physician within a reasonable time.						
	H. Storage of Drugs and Biologicals						
F679	SNF (405.1124(i)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F680	1. Procedures for storing and disposing of drugs and biologicals are established by the pharmaceutical services committee.						
F681	2. In accordance with State and Federal laws, all drugs and biologicals are stored in locked compartments under proper temperature controls.						
F682	3. Only authorized personnel have access to the keys.						
F683	4. Separately locked, permanently affixed compartments are provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention & Control Act of 1970 and other drugs subject to abuse, except under single unit dosage distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.						
F684	5. An emergency medication kit approved by the pharmaceutical services committee is kept readily available.						

NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F685	Dietetic Services (Condition of Participation) SNF (405.1125) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility provides a hygienic dietetic service that meets the daily nutritional needs of patients, ensures that special dietary needs are met, and provides palatable and attractive meals. A facility that has a contract with an outside food management company may be found to be in compliance with this condition provided the facility and/or company meets the standards listed herein.				
	A. Staffing				
F686	SNF (405.1125(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F687	1. Overall supervisory responsibility for the dietetic service is assigned to a full-time qualified dietetic service supervisor.				
F688	2. If the dietetic service supervisor is not a qualified dietitian, the dietetic service supervisor functions with frequent, regularly scheduled consultation from a person so qualified. (§405.1101(e).)				
F689	3. In addition, the facility employs sufficient supportive personnel competent to carry out the functions of the dietetic service.				
F690	4. If consultant dietetic services are used, the consultant's visits are at appropriate times, and of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, resident counseling, guidance to the supervisor and staff of the dietetic service, approval of all menus, and participation in the development or revisions of dietetic policies and procedures. (See §405.1121(i).)				

NAME OF FACILITY		DIETETIC SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
	B. Staffing						
F691	ICF (442.332) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F692	1. The facility has a staff member trained or experienced in food management or nutrition who is responsible for:						
	a. Planning meals that meet the nutritional needs of each resident.						
F693	b. Following the orders of the resident's physician.						
F694	c. To the extent medically possible, following the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences (Recommended Dietary Allowances, 8th Ed., 1974).						
F695	d. Supervising the meal preparation and service to ensure that the menu plan is followed.						
F696	2. For residents who required medically prescribed special diets, the facility:						
	a. Has menus for those residents planned by a professionally qualified dietitian or reviewed and approved by the attending physician; and						
F697	b. Supervises the preparation and serving of meals to ensure that the resident accepts the special diet.						
F698	3. The facility keeps for 30 days a record of each menu as served.						

NAME OF FACILITY		DIETETIC SERVICES/ SPECIALIZED REHABILITATION SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
	C. Hygiene of Staff						
F699	SNF (405.1125(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F700	In the event food service employees are assigned duties outside the dietetic service, these duties do not interfere with the sanitation, safety, or the time required for dietetic work assignments. (See §405.1121(g).)						
	D Sanitary Conditions						
F701	SNF (405.1125(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F702	Written reports of inspections by State and local health authorities are on file at the facility, with notation made of action taken by the facility to comply with any recommendations.						
	Specialized Rehabilitation Services (Condition of Participation)						
F703	SNF (405.1126) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility provides, or arranges for, under written agreement, specialized rehabilitative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by residents to improve and maintain functioning. Safe and adequate space and equipment are available, commensurate with the services offered. If the facility does not offer such services directly, it does not admit nor retain residents in need of this care unless provision is made for such services under arrangement with qualified outside resources under which the facility assumes professional responsibility for the services rendered. (See §405.1121(i).)						

NAME OF FACILITY		SPECIALIZED REHABILITATION SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
A. Staffing and Organization							
F704	SNF (405.1126(a)) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
Indicators 1 thru 3 apply to SNFs							
F705	ICF (442.343) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F706	1. Specialized rehabilitative services are provided, in accordance with accepted professional practices, by qualified therapists or by qualified assistants or other supportive personnel under the supervision of qualified therapists.						
F707	2. Other rehabilitative services also may be provided, but must be in a facility where all rehabilitative services are provided through an organized rehabilitative service under the supervision of a physician qualified in physical medicine who determines the goals and limitations of these services and assigns duties appropriate to the training and experience of those providing such services. Exception: Does not apply to ICFs.						
F708	3. Written administrative and resident care policies and procedures are developed for rehabilitative services by appropriate therapists and representatives of the medical, administrative, and nursing staffs. Exception: Does not apply to ICF's See General Requirements 442.305						

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CODE	SPECIALIZED REHABILITATION SERVICES/ PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Documentation of Services				
F709	SNF (405.1126(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The physician's order, the plan of rehabilitative care, services rendered, evaluations of progress, and other pertinent information are recorded in the patient's medical record, and are dated and signed by the physician ordering the service and the person who provided the service.				
	C. Qualifying to Provide Outpatient Physical Therapy Services				
F710	SNF (405.1126(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET If the facility provides outpatient physical therapy services, it meets the applicable health and safety regulations pertaining to such services as are included in Subpart Q of this part. (See §405.1719, 405.1720, 405.1722(a) and (b)(1)(2)(3)(i), (4), (5), (6), (7), and (8); and 405.1725.)				
	Pharmaceutical Services (Condition of Participation)				
F711	SNF (405.1127) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has appropriate methods and procedures for the dispensing and administering of drugs and biologicals. The facility is responsible for providing such drugs and biologicals for its residents, insofar as they are covered under the programs, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles.				

NAME OF FACILITY

CODE	PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
A. Supervision of Services					
F712	SNF (405.1127(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F713	1. The pharmaceutical services are under the general supervision of a qualified pharmacist.				
F714	2. The pharmacist is responsible to the administrative staff for developing coordinating, and supervising all pharmaceutical services.				
F715	3. The pharmacist (if not a full-time employee) devotes a sufficient number of hours, based upon the needs of the facility, during regularly scheduled visits to carry out these responsibilities.				
F716	ICF (442.333) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F717	1. The facility employs a licensed pharmacist, or				
F718	2. The facility has formal arrangements with a licensed pharmacist to advise the facility on ordering, storage, administration, disposal and recordkeeping of drugs and biologicals.				
B. Control and Accountability					
F719	SNF (405.1127(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F720	1. The pharmaceutical service has procedures for control and accountability of all drugs and biologicals throughout the facility.				
F721	2. Only approved drugs and biologicals are used in the facility.				
F722	3. Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation.				

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CODE	PHARMACEUTICAL SERVICES/ LABORATORY AND RADIOLOGIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Pharmaceutical Services Committee				
F723	SNF (405.1127(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F724	1. A pharmaceutical services committee or its equivalent develops written policies and procedures for safe and effective drug therapy, distribution, control and use.				
F725	2. The committee is comprised of at least the pharmacist, the director of nursing services, the administrator, and one physician.				
F726	3. The committee oversees pharmaceutical services in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.				
	Laboratory and Radiologic Services (Condition of Participation)				
F727	SNF (405.1128) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.				
	A. Provision for Services				
F728	SNF (405.1128(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F729	1. If the facility provides its own laboratory and X-ray services, these meet the applicable conditions established for certification of hospitals that are contained in 405.1028 and 405.1029, respectively.				

NAME OF FACILITY

CODE	LABORATORY AND RADIOLOGIC SERVICES/ DENTAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F730	2. If the facility itself does not provide such services, arrangements are made for obtaining these services from a physician's office, a participating hospital or skilled nursing facility, or a portable X-ray supplier or independent laboratory which is approved to provide these services under the program.				
F731	3. The facility assists the resident, if necessary, in arranging for transportation to and from the source of service.				
	B. Blood and Blood Products				
F732	SNF (405.1128(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F733	1. Blood handling and storage facilities are safe, adequate, and properly supervised.				
F734	2. If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established for certification of hospitals that are contained in §405.1028(j).				
F735	3. If the facility does not provide its own facility but does provide transfusion services alone, it meets at least the requirements of §405.1028(j)(1), (3), (4), (6), and (9).				
	Dental Services (Condition of Participation)				
F736	SNF (405.1129) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has satisfactory arrangements to assist residents to obtain routine and emergency dental care (See §405.1121(i)). (The basic Hospital Insurance Program does not cover the services of a dentist in a skilled nursing facility in connection with the care, treatment, filling, removal, or replacement of teeth or structures supporting the teeth; and only certain oral surgery is included in the Supplemental Medical Insurance Program.)				

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CODE	DENTAL SERVICES/SOCIAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Advisory Dentist				
F737	SNF (405.1129(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F738	A dentist recommends oral hygiene policies and practices for the care of residents. (§405.1121(h).)				
	B. Arrangements of Outside Services				
F739	SNF (405.1129(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F740	1. The facility has a cooperative agreement with a dentist, and				
F741	2. Maintains a list of dentists in the community for residents who do not have a private dentist.				
F742	3. The facility assists the resident, if necessary, in arranging for transportation to and from the dentist's office.				
	Social Services (Condition of Participation)				
F743	SNF (405.1130) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has satisfactory arrangements for identifying the medically related social and emotional needs of the resident. It is not mandatory that the skilled nursing facility itself provide social services in order to participate in the program. If the facility does not provide social services, it has written procedures for referring residents in need of social services to appropriate social agencies. If social services are offered by the facility, they are provided under a clearly defined plan, by qualified persons, to assist each resident to adjust to the social and emotional aspects of the resident's illness, treatment, and stay in the facility.				

NAME OF FACILITY		SOCIAL SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
A. Social Service Functions							
F744	SNF (405.1130(a)) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F745	Services are provided to meet the social and emotional needs of residents by qualified staff of the facility, or by referral, based on established procedures, to appropriate social agencies.						
F746	ICF (442.344(b))	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
	The facility either provides these services itself or arranges for them with qualified outside resources.						
B. Staffing							
F747	SNF (405.1130(b)) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F748	1. If the facility offers social services, a member of the staff of the facility is designated as responsible for social services.						
F749	2. If the designated person is not a qualified social worker, the facility has a written agreement with a qualified social worker or recognized social agency for consultation and assistance on a regularly scheduled basis. (See §405.1101(s).)						
F750	3. The social service also has sufficient supportive personnel to meet resident needs.						
F751	4. Facilities are adequate for social service personnel, easily accessible to residents and medical and other staff, and ensure privacy for interviews.						

NAME OF FACILITY		SOCIAL SERVICES/ACTIVITIES		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
F752	ICF (442.344(c))	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F753	The facility designates one staff member, qualified by training or experience, to be responsible for:						
	a. Arranging for social services; and						
F754	b. Integrating social services with other elements of the plan of care.						
	C. Records and Confidentiality						
F755	SNF (405.1130(c)) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F756	Records of pertinent social data about personal and family problems medically related to the resident's illness and care, and of action taken to meet the resident's needs, are maintained in the resident's medical records.						
F757	If social services are provided by an outside resource, a record is maintained of each referral to such resource.						
	Activities (Condition of Participation)						
F758	SNF (405.1131)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
	The facility provides for an activities program, appropriate to the needs and interests of each resident, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning.						

NAME OF FACILITY		EXPLANATORY STATEMENT	
CODE	ACTIVITIES/MEDICAL RECORDS	YES	NO
A. Staffing			
F759	SNF (405.1131(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET		
F760	A member of the facility's staff is designated as responsible for the activities program.		
F761	If not a qualified activities coordinator, this staff member functions with frequent, regularly scheduled consultation from a person so qualified. (See §405.1101(o).)		
F762	ICF (442.345(b)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility designates one staff member, qualified by training or experience in directing group activity, to be responsible for activity service.		
Medical Records (Condition of Participation)			
F763	SNF (405.1132) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility maintains clinical (medical) records on all residents in accordance with accepted professional standards and practices. The medical record service has sufficient staff, facilities, and equipment to provide medical records that are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.		
F764	ICF (442.318(a)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility maintains an organized resident record system that contains a record for each resident.		

NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
A. Staffing					
F765	SNF (405.1132(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F766	1. Overall supervisory responsibility for the medical record service is assigned to a full-time employee of the facility.				
F767	2. The facility also employs sufficient supportive personnel competent to carry out the functions of the medical record service.				
F768	3. If the medical record supervisor is not a qualified medical record practitioner, this person functions with consultation from a person qualified. (See §405.1101(f).)				
B. Protection of Medical Record Information					
F769	SNF (405.1132(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F770	ICF (442.318(d)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F771	The facility safeguards medical record information against loss, destruction, or unauthorized use.				
C. Physician Documentation					
F772	SNF (405.1132(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F773	1. Only physicians enter or authenticate in medical records opinions that require medical judgment (in accordance with medical staff bylaws, rules, and regulations, if applicable).				
F774	2. All physicians sign their entries into the medical record.				

NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	D. Completion of Records and Centralization of Reports				
F775	SNF (405.1132(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F776	1. Current medical records and those of discharged residents are completed promptly.				
F777	2. All clinical information pertaining to a resident's stay is centralized in the resident's medical record.				
	E. Retention and Preservation				
F778	SNF (405.1132(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Medical records are retained for a period of time not less than that determined by the respective State statute, the statute of limitations in the State, or 5 years from the date of discharge in the absence of a State statute, or, in the case of a minor, 3 years after the resident becomes of age under State law.				
F779	ICF (442.318(e)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility must keep a resident's record for at least 3 years after the resident is discharged.				
	F. Location and Facilities				
F780	SNF (405.1132(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility maintains adequate facilities and equipment, conveniently located to provide efficient processing of medical records (reviewing, indexing, filing, and prompt retrieval).				

NAME OF FACILITY

CODE	TRANSFER AGREEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	Transfer Agreement (Condition of Participation)				
F781	SNF (405.1133) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F782	ICF (442.316) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F783	The facility has in effect a transfer agreement with one or more hospitals approved for participation under the programs, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed. (A facility that has been unable to establish a transfer agreement with the hospital(s) in the community or service area after documented attempts to do so is considered to have such an agreement in effect.) Exception: A facility that has been unable to establish a written agreement after documented attempts to do so, is considered to have such an agreement.				
	Resident Transfer				
F784	SNF (405.1133(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F785	A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case of two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that: 1. Transfer of patients will be effected between the hospital and the skilled nursing facility, ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician.				

NAME OF FACILITY

CODE	TRANSFER AGREEMENT/PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F786	2. There will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.				
F787	3. Security and accountability for residents' personal effects are provided on transfer.				
	Physical Environment (Condition of Participation)				
F788	SNF (405.1134) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility is constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public.				
	A. Life Safety from Fire				
	SNF (405.1134(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	ICF (442.321) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	(See appropriate HCFA Fire Safety survey form.)				
	B. Maintenance of Equipment, Building, and Grounds				
F789	SNF (405.1134(i)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F790	The facility establishes a written preventative maintenance program to ensure that all equipment is operative.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
	Infection Control (Condition of Participation)				
F791	SNF (405.1135) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility establishes an infection control committee of representative professional staff with responsibility for overall infection control in the facility. All necessary housekeeping and maintenance services are provided to maintain a sanitary and comfortable environment and to help prevent the development and transmission of infection.				
	A. Infection Control Committee				
F792	SNF (405.1135(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F793	1. The infection control committee is composed of members of the medical and nursing staffs, administration, and the dietetic, pharmacy, housekeeping, maintenance, and other services.				
F794	2. The committee establishes policies and procedures for investigating, controlling, and preventing infection in the facility.				
F795	3. The committee monitors staff performance to ensure that the policies and procedures are executed.				
	B. Aseptic and Isolation Techniques				
F796	SNF (405.1135(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F797	1. The facility has written procedures for aseptic and isolation techniques.				
F798	2. These procedures are reviewed and revised for effectiveness and improvement as necessary.				

NAME OF FACILITY

CODE	INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
C. Housekeeping					
F799	SNF (405.1135(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F800	1. The facility employs sufficient housekeeping personnel.				
F801	2. Provides all necessary equipment to maintain a safe, clean and orderly interior.				
F802	3. A full-time employee is designated responsible for the services and for supervision and training of personnel.				
F803	4. If a facility has a contract with an outside resource for housekeeping services, the facility and/or outside resource meets the requirements of the standards.				
D. Pest Control					
F804	SNF (405.1135(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility has an ongoing pest control program.				

NAME OF FACILITY

NAME OF FACILITY

CODE	DISASTER PREPAREDNESS	YES	NO	N/A	EXPLANATORY STATEMENT
	Disaster Preparedness (Condition of Participation)				
F805	SNF (405.1136) The facility has a written plan, periodically rehearsed, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (residents and personnel) arising from such disasters.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	A. Plan				
F806	ICF (442.313) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F807	1. The facility has a written plan for staff and residents to follow in case of emergencies such as fire or explosion.				
F808	2. The facility rehearses the plan regularly.				
F809	3. The facility has written procedures for the staff to follow in case of an emergency involving an individual resident.				
F810	4. These procedures include: a. Caring for the resident.				
F811	b. Notifying the attending physician and other individuals responsible for the resident.				
F812	c. Arranging for transportation, hospitalization, and other appropriate services.				
F813	SNF (405.1136(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F814	1. The facility has an acceptable written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster.				
F815	2. The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts.				

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NAME OF FACILITY

CODE	DISASTER PREPAREDNESS/UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F816	3. Includes procedures for prompt transfer of casualties and records.				
F817	4. Instructions regarding the location and use of alarm systems and signals and of fire-fighting equipment.				
F818	5. Information regarding methods of containing fire.				
F819	6. Procedures for notification of appropriate persons.				
F820	7. Specifications of evacuation routes and procedures. (See §405.1134(a).)				
	B. Orientation and training				
F821	SNF (405.1136(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F822	The disaster program includes orientation and ongoing training and drills for all personnel in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster (See §405.1121(h).)				
	Utilization Review (Condition of Participation)				
F823	SNF (405.1137) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility carries out utilization review of the services provided in the facility to residents who are entitled to benefits under the program(s). Utilization review assures the maintenance of high quality care and appropriate and efficient utilization of facility services. There are two elements to utilization review: medical care evaluation studies and review of extended duration cases.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Plan				
F824	SNF (405.1137(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F825	1. The facility has a currently applicable written description of its utilization review plan.				
F826	2. Such description includes: a. The organization and composition of the committee or group which will be responsible for the utilization review function.				
F827	b. Methods of criteria (including norms where available) to be used to define periods of continuous extended duration and to assign or select subsequent dates for continued stay review.				
F828	c. Methods for selection and conduct of medical care evaluation studies.				
	B. Organization and Composition of Utilization Review Committees				
F829	SNF (405.1137(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F830	1. The utilization review (UR) function is conducted by: a. A staff committee of the skilled nursing facility which is composed of two or more physicians, with participation of other professional personnel; or,				

NAME OF FACILITY		UTILIZATION REVIEW		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
F831	<p>b. A group outside the facility which is similarly composed and which is established by the local medical or osteopathic society and some or all of the hospitals and skilled nursing facilities in the locality; or (indicate name of the outside group and briefly describe the organization.)</p>						
F832	<p>c. A group established and organized in a manner approved by the Secretary that is capable of performing such function.</p>						
F833	<p>2. The medical care evaluation studies, educational duties of the review program, and the review of admissions and long-stay cases are performed by:</p> <p>a. the same committee or group;</p> <p>b. or more committees or groups.</p> <p>Briefly explain who performs these functions.</p>						
F834							
	C. Medical Care Evaluation Studies						
F835	SNF (405.1137(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F836	1. Medical care evaluation studies are performed to promote the most effective and efficient use of available health facilities and services consistent with resident needs and professionally recognized standards of health care.						
F837	2. Studies emphasize identification and analysis of patterns of resident care and suggest, where appropriate, possible changes for maintaining consistently high quality care and effective and efficient use of services.						

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F838	3. Each medical care evaluation study identifies and analyzes factors related to the care rendered in the facility and where indicated, results in recommendations for change beneficial to residents, staff, the facility, and the community.				
F839	4. Studies, on a sample or other basis, include, but need not be limited to, admissions, durations of stay, ancillary services furnished (including drugs and biologicals), and professional services performed on premises.				
F840	At least one study was completed during the last year. Type of study last completed: _____				
	D. Extended Stay Review				
F841	SNF (405.1137(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F842	1. Periodic review is made of each current inpatient skilled nursing facility beneficiary case of continuous extended duration, and the length of which is defined in the utilization review plan to determine whether further inpatient stay is necessary.				
F843	2. The review is based on the attending physician's reasons for and plan for continued stay and any other documentation the committee or group deems appropriate.				
F844	3. Cases are screened by: a. A qualified non-physician representative of the committee.				
F845	b. The group.				
F846	c. The reviewer uses criteria established by the physician members of the committee.				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F847	4. In instances when non-physician members are utilized, those cases are referred to a physician member for further review when it appears that the resident no longer requires further inpatient care.				
F848	5. Non-physician representatives used to screen extended stay review cases, have experience in such screening or appropriate training in the application of the screening criteria used, or both.				
F849	6. Before the expiration of each new period, the case must be reviewed again in like manner with such reviews being repeated as long as the stay continues beyond the scheduled review dates and notice has not been given pursuant to paragraph (e) of this section.				
	E. Further Stay Not Medically Necessary				
F850	SNF (405.1137(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F851	1. A final determination of the committee or group that continued stay is not medically necessary is made by at least two physician members of the committee or group, except that the final determination may be made by one physician where the attending physician, when given an opportunity to express his views, does not do so, or does not contest the finding that the continued stay is not medically necessary.				
F852	2. If the committee or group, or its nonphysician representative where a physician member concurs, has reason to believe from the review of an extended duration case or a case reviewed as part of a medical care evaluation study that further stay is no longer medically necessary, the committee or group shall notify the individual's attending physician and afford him an opportunity to present his views before it makes a final determination.				

NAME OF FACILITY

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F853	3. If the final determination of the committee or group is that further stay is no longer medically necessary, written notification of the finding is given to the facility, the attending physician, and the individual (or where appropriate, his next of kin) no later than 2 days after such final determination is made and, in no event in the case of an extended duration case, later than 3 working days after the end of the extended duration period specified pursuant to paragraph (d) of this section.				
	F. Administrative Responsibilities				
F854	SNF (405.1137(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F855	The administrative staff of the facility is kept directly and fully informed of committee activities to facilitate support and assistance. (Explain)				
	G. Utilization Review Records				
F856	SNF (405.1137(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F857	1. Written records of committee activities are maintained.				
F858	2. Appropriate reports, signed by the committee chairman, are made regularly to the medical staff, administrative staff, governing body, and sponsors (if any).				
F859	3. Minutes of each committee meeting is maintained and include at least: a. Name of committee.				
F860	b. Date and duration of meeting.				
F861	c. Names of committee members present and absent.				

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F862	4. Description of activities presently in progress to satisfy the requirements for medical care evaluation studies, including the subject, reason for study, dates of commencement and expected completion, summary of studies completed since the last meeting, conclusions and follow-up on implementation of recommendations made from previous studies.				
F863	5. Summary of extended duration cases reviewed including the number of cases, identification number, admission and review dates, and decision reached, including the basis for each determination and action taken for each case not approved for extended care.				
F864	H. Discharge Planning SNF (405.1137(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET The facility maintains a centralized, coordinated program to ensure that each resident has a planned program of continuing care which meets his postdischarge needs.				
F865	1. The facility has in operation an organized discharge planning program.				
F866	The utilization review committee, in its evaluation of the current status of each extended duration case, has available to it the results of such discharge planning and information on alternative available community resources to which the resident may be referred.				
F867	2. The facility maintains written discharge planning procedures which describe: a. How the discharge coordinator will function, and his authority and relationships with the facility's staff. b. The maximum time period after which reevaluation of each resident's discharge plan is made.				
F868					

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NAME OF FACILITY

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F869	c. Local resources available to the facility, the resident, and the attending physician to assist in developing and implementing individual discharge plans; and				
F870	d. Provisions for periodic review and reevaluation of the facility's discharge planning program.				
F871	3. At the time of discharge, the facility provides those responsible for the resident's post discharge care with appropriate summary of information about the discharged resident to ensure the optimal continuity of care.				
	The discharge summary includes at least the following:				
F872	a. Current information relative to diagnoses.				
F873	b. Rehabilitation potential.				
F874	c. A summary of the course of prior treatment.				
F875	d. Physician orders for the immediate care of the resident.				
F876	e. Pertinent social information.				

§ 488.105 Long term care survey forms, Part B.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATIONFORM APPROVED
OMB NO. 0938-0400

PART B

MEDICARE / MEDICAID SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SURVEY REPORT

PROVIDER NUMBER

FACILITY NAME AND ADDRESS (City, State, Zip)

VENDOR NUMBER

SURVEY DATE

SURVEYORS' NAMES

TITLES

SURVEY TEAM COMPOSITION

F1 Indicate the Number of Surveyors According to Discipline

A.	Administrator
B.	Nurse
C.	Dietitian
D.	Pharmacist
E.	Records Administrator
F.	Social Worker
G.	Qualified Mental Health Professional

H.	Life Safety Code Specialist
I.	Laboratorian
J.	Sanitarian
K.	Therapist
L.	Physician
M.	National Institute of Mental Health
N.	Other

Note: More than one discipline may be marked for surveyors qualified in multiple disciplines.

F2 Indicate the Total Number of Surveyors Onsite: _____

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(CONTINUED ON REVERSE)

Page 1

RESIDENT CENSUS AND CONDITIONS OF RESIDENTS

F6
TOTAL RESIDENTSF5
OTHERF4
MEDICAIDF3
MEDICARE

PROVIDER NO.

CODE

BATHING

- F7 — Number of residents requiring assistance in bathing more than one part of body—or does not bathe self.
- F8 — Number of residents requiring assistance in bathing only a single part (as back or disabled extremity) or bathes self completely.
- F9 — TOTAL*

DRESSING

- F10 — Number of residents totally dressed by another person.
- F11 — Number of residents needing assistance to dress self or remain partly dressed. (Exclude those residents totally dressed.)
- F12 — Number of residents able to get clothes from closets and drawers—puts on clothes, outer garments, braces—manages fasteners. Act of tying shoes is excluded.
- F13 — TOTAL*

TOILETING

- F14 — Number of residents not toileted. (Use protective padding, catheter.)
- F15 — Number of residents who must use a bedpan or commode and/or receive assistance in getting to and using a toilet.
- F16 — Number of residents able to get to toilet—gets on and off toilet—cleans self—arranges clothes.
- F17 — TOTAL*

TRANSFERRING

- F18 — Number of residents needing assistance in all transfers (moving in or out of bed and/or chair, toilet, tub transfers).
- F19 — Number of residents needing assistance in transferring to toilet and tub only.
- F20 — Number of residents able to complete all transfers independently (may or may not be using mechanical supports).
- F21 — Total*

CONTINENCE

- F22 — Number of residents with indwelling or external catheters.
- F23 — Number of residents with partial or total incontinence in urination or defecation—partial or total control by suppositories or enemas, regulated use of urinals and/or bedpans.
- F24 — Number of residents with urination and defecation entirely self-controlled.
- F25 — TOTAL*

FEEDING

- F26 — Number of residents who receive enteral/parenteral feedings.
- F27 — Number of residents who receive NG tube feedings.
- F28 — Number of residents who require assistance in act of eating.
- F29 — Number of residents who get food from plate or its equivalent into mouth—(pre-cutting of meat and preparation of food, buttering bread, opening cartons, removing plate covers, etc., are excluded from evaluation).
- F30 — TOTAL*

F31 — Number of completely bedfast residents.

- F32 — Number of chairbound residents.
- F33 — Number of ambulatory residents (may use cane, walker, or crutches).
- F34 — Number of physically restrained residents (belt, vest, cuffs).
- F35 — Number of residents receiving psychotropic drugs.
- F36 — Number of confused or disoriented residents.
- F37 — Number of residents with decubiti.
- F38 — Number of residents on individually written bowel and bladder retraining program.
- F39 — Number of residents receiving special skin care.
- F40 — Number of residents receiving intravenous therapy and/or blood transfusion.
- F41 — Number of residents requiring no assistance in ADLs.
- F42 — Number of residents on self-administration of drugs.
- F43 — Number of residents with contractures.
- F44 — Number of residents receiving respiratory care.
- F45 — Number of residents receiving tracheostomy care.
- F46 — Number of residents receiving suctioning.
- F47 — Number of residents receiving rehabilitative services (physical therapy, speech pathology and audiology, occupational therapy)
- F48 — Number of residents receiving injections.
- F49 — Number of residents receiving colostomy care.

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*MUST EQUAL TOTAL NUMBER OF RESIDENTS IN FACILITY

Page 2

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	GOVERNING BODY (CONDITION OF PARTICIPATION)				
F50	SNF (405.1121) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	RESIDENT RIGHTS				
F51	SNF (405.1121(k)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	Indicators A thru K apply to this standard for SNFs				
F52	ICF (442.311) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	Indicators A thru K apply to this standard for ICFs				
	A. Information				
F53	1. The facility informs each resident, before or at the time of admission, of his/her rights and responsibilities.				
F54	2. The facility informs each resident, before or at the time of admission, of all rules governing resident conduct.				
F55	3. The facility informs each resident of amendments to their policies on residents' rights and responsibilities and rules governing conduct.				
F56	4. Each resident acknowledges in writing receipt of residents' rights information and any amendment to it.				
F57	5. The resident must be informed in writing of all services and charges for services.				
F58	6. The resident must be informed in writing of all changes in services and charges before or at the time of admission and on a continuing basis.				
F59	7. The resident must be informed of services not covered by Medicare or Medicaid and not covered in the basic rate.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Medical Condition and Treatment				
F60	1. Each resident is informed by a physician of his/her health and medical condition unless the physician decides that informing the resident is medically contraindicated.				
F61	2. Each resident is given an opportunity to participate in planning his/her total care and medical treatment.				
F62	3. Each resident is given an opportunity to refuse treatment.				
F63	4. Each resident gives informed, written consent before participating in experimental research.				
F64	5. If the physician decides that informing the resident of his/her health and medical condition is medically contraindicated, the physician has documented this decision in the resident's medical record.				
	C. Transfer and Discharge				
	Each resident is transferred or discharged only for:				
F65	1. Medical reasons.				
F66	2. His/her welfare or that of other residents.				
F67	3. Nonpayment except as prohibited by the Medicare or Medicaid program.				
F68	4. Each resident is given reasonable advance notice to ensure orderly transfer or discharge. EXCEPTION: Not required for ICF residents.				
	D. Exercising Rights				
F69	1. Each resident is encouraged and assisted to exercise his/her rights as a resident of the facility and as a citizen.				
F70	2. Each resident is allowed to submit complaints and recommendations concerning the policies and services of the facility to staff or to outside representatives of the resident's choice or both.				

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
F71	3. Such complaints are submitted free from restraint, coercion, discrimination, or reprisal.				
	E. Financial Affairs				
F72	1. Residents are allowed to manage their own personal financial affairs.				
F73	2. The facility establishes and maintains a system that assures full and complete accounting of residents' personal funds. An accounting report is made to each resident in a skilled nursing facility at least on a quarterly basis.				
F74	3. The facility does not commingle resident funds with any other funds.				
F75	4. If a resident requests assistance from the facility in managing his/her personal financial affairs, resident's delegation is in writing.				
	5. The facility system of accounting includes written receipts for:				
F76	All personal possessions and funds received by or deposited with the facility.				
F77	All disbursements made to or for the resident.				
F78	6. The financial record must be available to the resident and his/her family.				
	F. Freedom from Abuse and Restraints				
F79	1. Each resident is free from mental and physical abuse.				
F80	2. Chemical and physical restraints are only used when authorized by a physician in writing for a specified period of time or in emergencies.				

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NAME OF FACILITY

NAME OF FACILITY

NAME OF FACILITY		GOVERNING BODY		YES	NO	N/A	EXPLANATORY STATEMENT
CODE							
F81	3. If used in emergencies, they are necessary to protect the resident from injury to himself/herself or others.						
F82	4. The emergency use is authorized by a professional staff member identified in the written policies and procedures of the facility.						
F83	5. The emergency use is reported promptly to the resident's physician by the staff member.						
	G. Privacy						
F84	1. Each resident is treated with respect, consideration and full recognition of his/her dignity and individuality.						
F85	2. Each resident is given privacy during treatment and care of personal needs.						
F86	3. Each resident's records, including information in an automated data bank, are treated confidentially.						
F87	4. Each resident must give written consent before the facility releases information from his/her record to someone not otherwise authorized to receive it.						
F88	5. Married residents are given privacy during visits by their spouses.						
F89	6. Married residents are permitted to share a room.						
	H. Work						
F90	No resident may be required to perform services for the facility.						

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	I. Freedom of Association and Correspondence				
F91	1. Each resident is allowed to communicate, associate and meet privately with individuals of his/her choice unless this infringes upon the rights of another resident.				
F92	2. Each resident is allowed to send and receive personal mail unopened.				
	J. Activities				
F93	Each resident is allowed to participate in social, religious, and community group activities.				
	K. Personal Possessions				
F94	Each resident is allowed to retain and use his/her personal possessions and clothing as space permits.				
	L. Delegation of Rights and Responsibilities				
F95	ICF (442.312) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F96	1. All the rights and responsibilities of a resident pass to the resident's guardian, next of kin or sponsoring agency or agencies if the resident is adjudicated incompetent under State law or is determined by his/her physician to be incapable of understanding his/her rights and responsibilities.				
F97	2. Physician determinations of incapability and the specific reasons thereof are recorded by the physician in the resident's record.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
F98	STAFF DEVELOPMENT SNF (405.1121(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F99	ICF (442.314) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F100	1. Facility staff are knowledgeable about the problems and needs of the aged, ill, and disabled.				
F101	2. Facility staff practices proper techniques in providing care to the aged, ill, and disabled.				
F102	3. Facility staff practice proper technique for prevention and control of infection, fire prevention and safety, accident prevention, confidentiality of resident information, and preservation of resident dignity, including protection of privacy and personal and property rights.				
	STATUS CHANGE NOTIFICATIONS				
F103	SNF (405.1121(j)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F104	ICF (442.307) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F105	1. The facility notifies the resident's attending physician and other responsible persons in the event of an accident involving the resident, or other significant change in the resident's physical, mental, or emotional status, or resident charges, billings, and related administrative matters.				
F106	2. Except in a medical emergency, a resident is not transferred or discharged, nor is treatment altered radically, without consultation with the resident or, if the resident is incompetent, without prior notification of next of kin or sponsor.				

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NAME OF FACILITY

CODE	PHYSICIANS' SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
	PHYSICIANS' SERVICES (CONDITION OF PARTICIPATION)					
F107	SNF (405.1123)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	A. Medical Findings and Orders at Time of Admission					
F108	SNF (405.1123(a)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F109	1. There is made available to the facility prior to or at the time of admission, resident information which includes current medical findings, diagnoses, and orders from a physician for immediate care of the resident.					
F110	2. Information about the rehabilitation potential of the resident and a summary of prior treatment are made available to the facility at the time of admission or within 48 hours thereafter.					

NAME OF FACILITY

NAME OF FACILITY

EXPLANATORY STATEMENT

CODE	PHYSICIANS' SERVICES	YES	NO	N/A
	B. Resident Supervision by Physician			
F111	SNF (405.1123(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET			
F112	ICF (442.346) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators B and C apply to this standard for ICFs			
F113	1. Every resident must be under the supervision of a physician.			
F114	2. A physician prescribes a planned regimen of care based on a medical evaluation of each resident's immediate and long-term care needs. Exception: Not required for ICF residents			
F115	3. A physician is available to provide care in the absence of any resident's attending physician.			
F116	4. Medical evaluation is done within 48 hours of admission unless done within 5 days prior to admission. Exception: Not required for ICF residents.			
F117	5. Each resident is seen by their attending physician at least once every 30 days for the first 90 days after admission. Exception: ICF residents must be seen every 60 days unless otherwise justified and documented by the attending physician.			
F118	6. Each resident's total program of care including medications and treatments is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days and revised as necessary. Exception: Only medications must be reviewed quarterly for ICF residents.			

NAME OF FACILITY

CODE	PHYSICIANS' SERVICES/NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F119	7. Progress notes are written and signed by the physician at the time of each visit, and all orders are signed by the physician.				
F120	8. Alternate physician visit schedules that exceed a 30-day schedule adopted after the 90th day following admission are justified by the attending physician in the medical record. These visits cannot exceed 60 days or apply to residents who require specialized rehabilitation schedules. EXCEPTION: Not required for ICF residents.				
	C. Emergency Services				
F121	SNF (405.1123(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F122	Emergency services from a physician are available and provided to each resident who requires emergency care.				
	NURSING SERVICES (CONDITION OF PARTICIPATION)				
F123	SNF (405.1124) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F124	SNF (405.1124(c)) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met Indicators A and B apply to this standard for SNFs				
F125	ICF (442.338) <input type="checkbox"/> Met <input type="checkbox"/> Not Met Indicators A thru E apply to this standard for ICFs except where noted.				
	A. The facility provides nursing services which are sufficient to meet nursing needs of all residents all hours of each day.				
F126	1. Each resident receives all treatments, medications and diet as prescribed. Deviations are reported and appropriate action is taken.				

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NAME OF FACILITY

NAME OF FACILITY

EXPLANATORY STATEMENT

CODE	NURSING SERVICES	YES	NO	N/A
F127	2. Each resident receives daily personal hygiene as needed to assure cleanliness, good skin care, good grooming, and oral hygiene taking into account individual preferences. Residents are encouraged to engage in self care activity.			
F128	3. Each resident receives care necessary to prevent skin breakdown.			
F129	4. Each resident with a decubitus receives care necessary to promote the healing of the decubitus including proper dressing.			
F130	5. When residents require restraints the application is ordered by the physician, applied properly, and released at least every 2 hours.			
F131	6. Each resident with incontinence is provided with care necessary to encourage continence including frequent toileting and opportunities for rehabilitative training.			
F132	7. Each resident with a urinary catheter receives proper routine care including periodic evaluation.			
F133	8. Each resident receives proper care for the following needs: Injections Parenteral Fluids Colostomy/Ileostomy Respiratory Care Tracheostomy Care Suctioning Tube Feeding			
F134	9. Infection Control Techniques are properly carried out in the provision of care to each resident.			

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F135	10. Proper nursing and sanitary procedures and techniques are used when medications are given to residents.				
F136	11. Adequate resident care supplies are available for providing treatments.				
	B. Twenty-Four Hour Nursing Service				
F137	1. Nursing personnel, including registered nurses, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience, and based on the characteristics of the resident load. EXCEPTION: Not required for ICFs.				
F138	2. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel including relief personnel, who worked on each unit for each tour of duty. (If a distinct part certification, show the staffing for the DP and, if appropriate, any nonparticipating remainder and explain any sharing of nursing personnel.) Exception: Not required for Freestanding ICFs.				
F139	3. There is a sufficient number of nursing staff available to meet the total needs of all residents.				
F140	4. There is a registered nurse on the day tour of duty 7 days a week. Exception: Not required for ICF residents.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Charge Nurse				
F141	SNF (405.1124(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F142	1. A registered nurse or a qualified licensed practical (or vocational) nurse is designated as charge nurse by the director of nursing for each tour of duty. Exception: Not required for ICFs.				
F143	2. The director of nursing services does not serve as charge nurse in a facility with an average daily total occupancy of 60 or more residents. Exception: Not required for ICFs.				
F144	3. The ICF must have a registered nurse, or a licensed practical or vocational nurse full-time, 7 days a week, on the day shift. Exception: Not required for SNFs.				

NAME OF FACILITY

List the number of full-time equivalents of RN's, LPN's, Aides/Orderlies assigned to nursing duty from the last 3 complete weeks. (Note only actual staff on duty.)

Shift	CODE	Day 1			Day 2			Day 3			Day 4			Day 5			Day 6			Day 7		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP	F145																				
	Entire Facility	F146																				
EVENING	DP	F147																				
	Entire Facility	F148																				
NIGHT	DP	F149																				
	Entire Facility	F150																				

Shift	CODE	Day 1			Day 2			Day 3			Day 4			Day 5			Day 6			Day 7		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP																					
	Entire Facility																					
EVENING	DP																					
	Entire Facility																					
NIGHT	DP																					
	Entire Facility																					

NAME OF FACILITY

NAME OF FACILITY

Shift	CODE	Day 1		Day 2		Day 3		Day 4		Day 5		Day 6		Day 7		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP															
	F151															
EVENING	Entire Facility															
	F152															
NIGHT	DP															
	F153															
	Entire Facility															
	F154															
	DP															
	F155															
	Entire Facility															
	F156															

STAFFING PATTERN WORKSHEETS DAY OF SURVEY (OPTIONAL)**ENTIRE FACILITY STAFFING PATTERN (DAY OF SURVEY)**

	CODE	RN	PN	A
DAY	F157			
	F158			
EVENING	F159			
	F160			
NIGHT	F161			
	F162			

UNIT STAFFING PATTERN WORKSHEET (DAY OF SURVEY)

	CODE	Unit			Unit			Unit			Unit			Unit		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	F163															
EVENING	F164															
NIGHT	F165															
CENSUS	F166															

NAME OF FACILITY

CODE	NURSING SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
	D PATIENT CARE MANAGEMENT					
F167	SNF (405.1124(d)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F168	ICF (442.341) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F169	1 Each resident's needs are addressed in a written plan of care which demonstrates that the plans of all services are integrated, consonant with the physician's plan of medical care, and implemented shortly after admission.					
F170	2 Each professional service identifies needs, goals, plans, and evaluates the effectiveness of interventions, plus institutes changes in the plan of care in a timely manner.					
	E. Rehabilitative Nursing Services are performed daily, and recorded for those residents who require such service.					
F171	SNF (405.1124(e)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F172	ICF (442.342) (Standard)	<input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F173	1. Each resident receives rehabilitative nursing care to promote maximum physical functioning to prevent immobility, deformities, and contractures.					
F174	2. There is an ongoing evaluation of each resident's rehabilitative nursing needs. This may include:					
F175	(a) Range of motion, ambulation, turning and positioning and other activities;					
F176	(b) Assistance and instruction in the activities of daily living such as feeding, dressing, grooming, oral hygiene and toilet activities;					
F177	(c) Remotivation therapy and/or reality orientation when appropriate.					
F178	3. These activities are coordinated with other resident care services.					

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NAME OF FACILITY

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F179	<p>F. The facility has an awareness of nutritional needs and fluid intake of residents and provides prompt assistance where necessary in feeding residents.</p> <p>SNF (405.1124(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET</p>				
F180	<p>1. Each resident is provided with the amount of food and fluid on a daily basis necessary to maintain their appropriate minimum average weight. Between meal feedings are offered and the amount consumed is observed. Daily food and fluid intake is observed and encouraged.</p>				
F181	<p>2. Each resident needing assistance in eating or drinking is provided prompt assistance. Specific self-help devices are available when necessary.</p>				
F182	<p>3. Deviations from normal food and fluid intake are recorded and reported to the charge nurse and the attending physician.</p>				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	G. Administration of Drugs				
F183	SNF (405.1124(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F184	ICF (442.337) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F185	1. The resident is identified prior to administration of a drug.				
F186	2. Drugs and biologicals are administered as soon as possible after doses are prepared.				
F187	3. Administered by same person who prepared the doses for administration except under single unit dose package distribution systems.				
F188	Exception: ICF residents may self administer medication only with their physician's permission.				
	H. Conformance with Physician Drug Orders				
F189	SNF (405.1124(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F190	ICF (442.334) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F191	Drugs are administered in accordance with written orders of the attending physician.				
F192	Drug Error Rate _____ % (See Form HCFA-522)				

Form HCFA-519 (2-86)

NAME OF FACILITY

NAME OF FACILITY

CODE	DIETETIC SERVICES (CONDITION OF PARTICIPATION)	YES	NO	N/A	EXPLANATORY STATEMENT
F193	SNF (405.1125) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F194	ICF (442.332) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators A and B apply to this standard for ICFs.				
F195	A. Menus and Nutritional Adequacy SNF (405.1125(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Menus are planned and followed to meet the nutritional needs of each resident in accordance with physicians' orders and, to the extent medically possible, based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.				
F196					
F197	B. Therapeutic Diets SNF (405.1125(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F198	1. Therapeutic diets are prescribed by the attending physician.				
F199	2. Therapeutic menus are planned in writing, prepared, and served as ordered with supervision from the dietitian and advice from the physician whenever necessary.				
F200	Number of Regular Diets _____				
F201	Number of Therapeutic Diets _____				
F202	Number of Mechanically Altered Diets _____				
F203	Number of Tube Feedings _____				

NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
C. Preparation					
F204	SNF (405.1125(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F205	1. Food is prepared by methods that conserve its nutritive value and flavor.				
F206	2. Meals are palatable, served at proper temperatures. They are cut, ground, chopped, pureed or in a form which meets individual resident needs.				
F207	3. If a resident refuses food served, appropriate substitutes of similar nutritive value are offered.				
D. Frequency					
F208	SNF (405.1125(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F209	ICF (442.331) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F210	1. At least three meals are served daily at regular hours with not more than a 14-hour span between a substantial evening meal and breakfast.				
F211	2. To the extent medically possible, bedtime nourishments are offered to all residents. Exception: Not required for ICF Residents.				
E. Staffing					
F212	SNF (405.1125.(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F213	1. Food service personnel are on duty daily over a period of 12 or more hours.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	SPECIALIZED REHABILITATIVE SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
	SPECIALIZED REHABILITATIVE SERVICES (CONDITION OF PARTICIPATION)					
F214	SNF (405.1126)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F215	SNF (405.1126(b)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F216	ICF (442.343) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F217	A. Plan of Care Rehabilitative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapists(s) and the nursing service.					
F218	B. Therapy Therapy is provided according to orders of the attending physician in accordance with accepted professional practices by qualified therapists or qualified assistants.					
F219	C. Progress 1. A report of the resident's progress is communicated to the attending physician within 2 weeks of the initiation of specialized rehabilitative services. Exception: ICF resident's progress must be reviewed regularly.					

NAME OF FACILITY

CODE	SPECIALIZED REHABILITATIVE SERVICES/PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F220	2. The resident's progress is thereafter reviewed regularly, and the plan of rehabilitative care is reevaluated as necessary, but at least every 30 days, by the physician and the therapist. Exceptions: ICF residents' plans must be revised as necessary.				
	PHARMACEUTICAL SERVICES (CONDITION OF PARTICIPATION)				
F221	SNF (405.1127) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	A. Supervision				
F222	SNF (405.1127(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F223	ICF (442.336) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F224	The pharmacist reviews the drug regimen of each resident at least monthly and reports any irregularities to the medical director and administrator.				

NAME OF FACILITY

CODE	PHARMACEUTICAL SERVICES		YES	NO	N/A	EXPLANATORY STATEMENT
	LABORATORY AND RADIOLOGIC SERVICES/SOCIAL SERVICES					
	B. Labeling of Drugs and Biologicals					
F225	SNF (405.1127(c)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F226	ICF (442.333) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F227	The labeling of drugs and biologicals is based on currently accepted professional principles and includes the appropriate accessory and cautionary instructions as well as an expiration date when applicable.					
	LABORATORY AND RADIOLOGIC SERVICES (CONDITION OF PARTICIPATION)					
F228	SNF (405.1128)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F229	SNF (405.1128(a)) (Standard)	<input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	Provision of Services					
F230	1. All services are provided only on the orders of a physician.					
F231	2. The attending physician is notified promptly of diagnostic findings.					
F232	3. Signed and dated reports of a clinical laboratory, X-ray and other diagnostic services are filed with the resident's medical record.					

NAME OF FACILITY

CODE	SOCIAL SERVICES/ACTIVITIES	YES	NO	N/A	EXPLANATORY STATEMENT
	SOCIAL SERVICES (CONDITION OF PARTICIPATION)				
F233	SNF (405.1130) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F234	SNF (405.1130(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F235	ICF (442.344) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	A. Plan				
F236	The medically related social and emotional needs of the resident are identified.				
	B. Provision of Services				
F237	1. Services are provided to meet the social and emotional needs by the facility or by referral to an appropriate social agency.				
F238	2. If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency.				
	ACTIVITIES (CONDITION OF PARTICIPATION)				
F239	SNF(405.1131) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
	Provision of Services				
F240	SNF (405.1131(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				

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NAME OF FACILITY

NAME OF FACILITY

CODE	ACTIVITIES	YES		NO		N/A	EXPLANATORY STATEMENT
F241	ICF (442.345) (Standard)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
F242	1. An ongoing program of meaningful activities is provided based on identified needs and interests of each resident. It is designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any.						
F243	2. Unless contraindicated by the attending physicians each resident is encouraged to participate in the activities program.						
F244	3. The activities promote the physical, social and mental well-being of the resident.						
F245	4. Equipment is maintained in good working order.						
F246	5. Supplies and equipment are available.						

NAME OF FACILITY		MEDICAL RECORDS		YES	NO	N/A	EXPLANATORY STATEMENT
MEDICAL RECORDS (CONDITION OF PARTICIPATION)							
F247	SNF (405.1132)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
Content							
F248	SNF (405.1132(c)) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F249	ICF (442.318) (Standard)	<input type="checkbox"/> MET	<input type="checkbox"/> NOT MET				
F250	1. The medical record contains sufficient information to identify the resident clearly, to justify diagnoses and treatment, and to document results accurately.						

NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	2. The medical record contains the following information:				
F251	a. Identification information				
F252	b. Admission data including past medical and social history				
F253	c. Transfer form, discharge summary from any transferring facility				
F254	d. Report of resident's attending physician				
F255	e. Report of physical examinations				
F256	f. Reports of physicians' periodic evaluations and progress notes				
F257	g. Diagnostic reports and therapeutic orders				
F258	h. Reports of treatments				
F259	i. Medications administered				
F260	j. An overall plan of care setting forth goals to be accomplished through each service's designed activities, therapies and treatments.				
F261	k. Assessments and goals of each service's plan of care				
F262	l. Treatments and services rendered				
F263	m. Progress notes				
F264	n. All symptoms and other indications of illness or injury including date, time and action taken regarding each problem.				

NAME OF FACILITY

CODE	TRANSFER AGREEMENT (CONDITION OF PARTICIPATION)	YES	NO	N/A	EXPLANATORY STATEMENT
F265	SNF (405.1133) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F266	SNF (405.1133(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F267	ICF (442.316) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F268	A. Whenever the attending physician determines that a transfer is medically appropriate between a hospital or a facility providing more specialized care and the nursing facility, admission to the new facility shall be effected in a timely manner.				
F269	B. Information necessary for providing care and treatment to transferred individuals is provided.				

NAME OF FACILITY

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT (CONDITION OF PARTICIPATION)	YES	NO	N/A	EXPLANATORY STATEMENT
F270	SNF (405.1134) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F271	A. Nursing Unit SNF (405.1134(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F272	1. The unit is properly equipped for preparation and storage of drugs and biologicals.				
F273	2. Utility and storage rooms are adequate in size.				
F274	3. The unit is equipped to register resident calls with a functioning communication system from resident areas including resident rooms and toilet and bathing facilities.				
	B. Dining and Activities Area				
F275	SNF (405.1134(g)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F276	ICF (442.329) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F277	1. The facility provides one or more clean, orderly and appropriately furnished rooms of adequate size, designated for resident dining and resident activities.				
F278	2. Dining and activity rooms are well lighted and ventilated.				
F279	3. Any multipurpose room used for dining and resident activities has sufficient space to accommodate all activities and prevent their interference with each other.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F280	SNF (405.1134(e)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET INDICATORS C AND D APPLY TO THIS STANDARD FOR SNFS.				
	C. Resident Rooms				
F281	ICF (442.325) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F282	1. Single resident rooms have at least 100 square feet.				
F283	2. Multiple resident rooms have no more than four residents and at least 80 square feet per resident.				
F284	3. Each room is equipped with or conveniently located near toilet and bathing facilities.				
F285	4. There is capability of maintaining privacy in each.				
F286	5. There is adequate storage space for each resident.				
F287	6. There is a comfortable and functioning bed and chair plus a functional cabinet and light.				
F288	7. The resident call system functions in resident rooms.				
F289	8. Each room is designed and equipped for adequate nursing care and the comfort and privacy of the residents.				
F290	9. Each room is at or above grade level.				
F291	10. Each room has direct access to a corridor and outside exposure. Exception: Not required for ICF residents.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	D. Toilet and Bath Facilities				
F292	ICF (442.326) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F293	1. Facilities are clean, sanitary and free of odors.				
F294	2. Facilities have safe and comfortable hot water temperatures.				
F295	3. Facilities maintain privacy.				
F296	4. Facilities have grab bars and other safeguards against slipping.				
F297	5. Facilities have fixtures in good condition.				
F298	6. The resident call system functions in toilet and bath facilities.				
	E. Social Service Area				
F299	SNF (405.1130(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F300	1. Ensures privacy for social service interviewing.				
F301	2. Adequate space for clerical and interviewing functions is provided.				
F302	3. Facilities are easily accessible to residents and staff.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F. Therapy Areas					
F303	SNF (405.1126(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F304	ICF (442.328(a)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F305	1. Space is adequate for proper use of equipment by all residents receiving treatments.				
F306	2. Equipment is safe and in proper working condition.				
G. Facilities for Special Care					
F307	SNF (405.1134(f)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F308	ICF (442.328(b)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F309	1. Single rooms with private toilet and handwashing facilities are available for isolating residents.				
F310	2. Precautionary signs are used to identify these rooms when in use.				
H. Common Resident Areas					
F311	SNF (405.1134(j)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F312	ICF (442.324) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F313	1. All common resident areas are clean, sanitary and free of odors.				
F314	2. Provision is made for adequate and comfortable lighting levels in all areas.				
F315	3. There is limitation of sounds at comfort levels.				

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NAME OF FACILITY

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F316	4. A comfortable room temperature is maintained.				
F317	5. There is adequate ventilation through windows or mechanical means or a combination of both.				
F318	6. Corridors are equipped with firmly secured handrails on each side.				
F319	7. Staff are aware of procedures to ensure water to all essential areas in the event of loss of normal supply.				
	I. Maintenance of Building and Equipment				
F320	SNF (405.1134(i)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F321	1. The interior and exterior of the building are clean and orderly.				
F322	2. All essential mechanical and electrical equipment is maintained in safe operating condition.				
F323	3. Sufficient storage space is available and used for equipment to ensure that the facility is orderly and safe.				
F324	4. Resident care equipment is clean and maintained in safe operating condition.				
F325	ICF (442.331(b)) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators J thru L apply to ICFs.				
	J. Dietetic Service Area				
F326	SNF (405.1134(h)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F327	1. Kitchen and dietetic service areas are adequate to insure proper, timely food services for all residents				
F328	2. Kitchen areas are properly ventilated, arranged, and equipped for storage and preparation of food as well as for dish and utensil cleaning, and refuse storage and removal.				

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NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT/INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
K. HYGIENE OF DIETARY STAFF					
F329	SNF (405.1125(f)) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F330	Dietetic service personnel practice hygienic food handling techniques.				
L. DIETARY SANITARY CONDITIONS					
F331	SNF (405.1125(g)) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F332	1. Food is stored, refrigerated, prepared, distributed, and served under sanitary conditions.				
F333	2. Waste is disposed of properly.				
M. Emergency Power					
F334	SNF (405.1134(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F335	1. An emergency source of electrical power necessary to protect the health and safety of residents is available in the event the normal electrical supply is interrupted.				
F336	2. Emergency power is adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life safety support systems.				
F337	3. Emergency power is provided by an emergency electrical generator located on the premises where life support systems are used.				
INFECTION CONTROL (CONDITION OF PARTICIPATION)					
F338	SNF (405.1135) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
A. Infection Control					
F339	SNF (405.1135(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F340	Aseptic and isolation techniques are followed by all personnel.				

NAME OF FACILITY

CODE	INFECTION CONTROL/DISASTER PREPAREDNESS	YES	NO	N/A	EXPLANATORY STATEMENT
B. Sanitation					
F341	SNF (405.1135(c)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F342	The facility maintains a safe, clean, and orderly interior.				
C. Linen					
F343	SNF (405.1135(d)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F344	ICF (442.327) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F345	1. The facility has available at all times a quantity of linen essential for proper care and comfort of residents.				
F346	2. Linens are handled; stored, processed, and transported in such a manner as to prevent the spread of infection.				
D. PEST CONTROL					
F347	SNF (405.1135(e)) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F348	ICF (442.315(c)) (Standard) <input type="checkbox"/> Met <input type="checkbox"/> Not Met				
F349	The facility is maintained free from insects and rodents.				
DISASTER PREPAREDNESS (CONDITION OF PARTICIPATION)					
F350	SNF (405.1136) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F351	SNF (405.1136(a)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET				
F352	ICF (442.313) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET Indicators A and B apply to this standard for ICRs.				
A. Disaster Plan					
F353	1. Facility staff are aware of plans, procedures to be followed for fire, explosion or other disaster.				

NAME OF FACILITY		DISASTER PREPAREDNESS		YES	NO	N/A	EXPLANATORY STATEMENT
F354	2. Facility staff are knowledgeable about evacuation routes.						
F355	3. Facility staff are aware of their specific responsibilities in regard to evaluation and protection of residents.						
F356	4. Facility staff are aware of methods of containing fire.						
	B. Drills						
F357	SNF (405.1136(b)) (Standard) <input type="checkbox"/> MET <input type="checkbox"/> NOT MET						
F358	1. All employees are trained, as part of their employment orientation in all aspects of preparedness for any disaster.						
F359	2. Facility staff participate in ongoing training and drills in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster.						

SKILLED NURSING FACILITY & INTERMEDIATE CARE FACILITY

SURVEY REPORT — PART B

CRUCIAL DATA EXTRACT

(To be used with 2-86 Revision of Form HCFA-519)

PROVIDER NO.	FACILITY NAME	SURVEY DATE
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SURVEY TEAM COMPOSITION

*F1: INDICATE THE NUMBER OF SURVEYORS ACCORDING TO DISCIPLINE:

A. _____	ADMINISTRATOR	H. _____	LIFE SAFETY CODE SPECIALIST
B. _____	NURSE	I. _____	LABORATORIAN
C. _____	DIETITIAN	J. _____	SANITARIAN
D. _____	PHARMACIST	K. _____	THERAPIST
E. _____	RECORDS ADMINISTRATOR	L. _____	PHYSICIAN
F. _____	SOCIAL WORKER	M. _____	NATIONAL INSTITUTE OF MENTAL HEALTH
G. _____	QUALIFIED MENTAL RETARDATION PROFESSIONAL	N. _____	OTHER

NOTE: MORE THAN ONE DISCIPLINE MAY BE MARKED FOR SURVEYORS QUALIFIED IN MULTIPLE DISCIPLINES.

*F2: INDICATE THE TOTAL NUMBER OF SURVEYORS ONSITE: _____

*P193 DRUG ERROR RATE: _____ % (Round % to nearest whole number.)

*SF5 Survey Form Indicator (Check one)

Traditional Survey

(1) ☐

New LTC Survey

(2) ☐

NOTE: PLEASE ATTACH COPY OF PAGES 2, 14 AND 15.

*Mandatory

Form HCFA-519E (2-86)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0400

RESIDENTS SELECTED FOR INDEPTH REVIEW

PROVIDER NUMBER		SURVEY DATE		RESIDENT NAME (TARGETED)*	ROOM NUMBER	REASON FOR SELECTION
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						

FORM HCFA-520 (2-86)

* NOTE IF ICF OR SNF RESIDENT

* U.S. GPO: 1986 O-181-284/53839

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0400

TOUR NOTES WORKSHEET

SURVEY DATE

PROVIDER NUMBER

INSTRUCTIONS

1. Note care and problems in care on all units.
2. Report deficiencies directly to survey report form or evaluate further during in-depth sample review.
3. Select residents for in-depth review.
4. Select a proportionate number from each section.

INDEPTH SAMPLE

Facility Census	0-60	61-120	121-200	200+
Sample Size	25% (Min10)	20% (Min15)	15% (Min24)	10% (Max50)

OBSERVE RESIDENTS FOR THE FOLLOWING CARE PROBLEMS

GROOMING/PERSONAL HYGIENE

POSITIONING

ASSISTIVE DEVICES

AMBULATION

RESTRAINTS

HYDRATION

INFECTION CONTROL

PATIENT RIGHTS

OTHER

FORM HCFA-521 (2-86)

DRUG ERROR CALCULATION (SEE SOM Appendix N Part 2)

How to Calculate a Medication Error Rate—In calculating the percentage of errors, the numerator in the ratio is the total number of errors that you observe, both significant and non-significant. The denominator is all the doses observed being administered plus the doses ordered but not administered. The equation for calculating a medication error rate is as follows:

$$\text{Medication Error Rate} = \frac{\text{Number of errors observed}}{\text{Opportunities for errors}} \times 100$$

Where: Opportunities for errors equals the number of doses administered plus the number of doses ordered but not administered.

Comments

For example, you observed the administration of drugs to 20 patients. There were a total of 47 drugs administered (47 opportunities for errors). At the completion of the reconciliation of your Observations with the physicians' orders, you find that three medication errors were made in administration and one medication was omitted (ordered but not administered). The omitted dose is included in both the numerator and the denominator. Therefore, following the above formula, your equation would be as follows:

$$\frac{3 + 1}{47 + 1} \times 100 = 8.3\%$$

DINING AREA & EATING ASSISTANCE WORKSHEET

PROVIDER NUMBER

SURVEY DATE

INSTRUCTIONS

TASKS 1. Observe Dining Area

2. Note Meals Served/Review Physicians Orders.

3. Note Assistance Provided.

4. Note Deficiencies on Survey Summary Form.

* SAMPLE A MINIMUM OF FIVE (5) RESIDENTS *

1. DINING AREA AND MEALS

- a. Size does not restrict movement.
- b. Accommodates all residents.
- c. Cleanliness.
- d. Adequate/comfortable lighting.
- e. Adequate/comfortable ventilation.

2. SERVING OF MEALS *

- a. Number of meals/time span between meal.
- b. Conformance to physicians order.
- c. Nutritional adequacy.
- d. Adequacy of portions.
- e. Residents eat approximately 75% of meals.
- f. Puree dishes served individually.
- g. Food cut, chopped or ground for individual resident needs.
- h. Acceptable taste.
- i. Proper temperature.
- j. Plates covered.

2. SERVING OF MEALS * (continued)

- k. Served promptly.
- l. Residents ready for meal when served.
- m. Attractive.
- n. Utensils available.
- o. Functional trays for bedfast residents.
- p. Salt, pepper, sugar, other condiments on resident's trays unless contraindicated.
- q. Medically able residents eating in dining area.
- r. Bedtime nourishment offered.

3. SUPERVISION OF RESIDENT NUTRITION

- a. Prompt assistance.
- b. Proper assistance (spoon-feeding; supervision or instruction to develop eating skills).
- c. Courteous and unhurried assistance.
- d. Self-help devices present (straws, easy grip utensils, special cup, etc.).
- e. Intake recorded/deviations from normal are reported.

OBSERVATION/INTERVIEW OF: (RESIDENT IDENTIFIER)

PROVIDER NUMBER

1. Observe each resident in sample to identify ADL needs and potential problems. Check appropriate blocks.
2. Interview only residents in sample who are capable and willing.
3. Review each resident's record to ensure assessments, plans, interventions and evaluations are appropriate and current.
4. Note deficiencies on survey report form after reviewing all residents in sample.

ADL's	GROOMING/HYGIENE	RESTRAINTS	COLOSTOMY/ILEOSTOMY	REPIRATORY	REHABILITATION NEEDS	ACTIVITY NEEDS
<input type="checkbox"/> Bathing	<input type="checkbox"/> Eyes/Ears/Mouth	<input type="checkbox"/> Type	<input type="checkbox"/> Present	<input type="checkbox"/> Congested/Short	<input type="checkbox"/> Cannot Communicate	<input type="checkbox"/> Not Participating
<input type="checkbox"/> Dressing	<input type="checkbox"/> Oral/Dental Hygiene	<input type="checkbox"/> Inappropriate Application	<input type="checkbox"/> Not Well Regulated	<input type="checkbox"/> Breath	<input type="checkbox"/> Ineffective Use of	<input type="checkbox"/> Vision/Hearing
<input type="checkbox"/> Toileting	<input type="checkbox"/> Foot Care	<input type="checkbox"/> Improper Body	<input type="checkbox"/> Odors	<input type="checkbox"/> IPPB Not Available	<input type="checkbox"/> Assistive Device	<input type="checkbox"/> Chair/Bedfast
<input type="checkbox"/> Transferring	<input type="checkbox"/> Facial Hair	<input type="checkbox"/> Alignment/Support	<input type="checkbox"/> Diarrhea/Constipation	<input type="checkbox"/> Oxygen Not Available	<input type="checkbox"/> Improper Equipment	<input type="checkbox"/> Dependence \geq 4 ADL's
<input type="checkbox"/> Continence	<input type="checkbox"/> Hair/Scalp	<input type="checkbox"/> Not Released/Exercised	<input type="checkbox"/> Site Red/Irritated	<input type="checkbox"/> Improper Equipment	<input type="checkbox"/> Use	
<input type="checkbox"/> Feeding	<input type="checkbox"/> Nails	<input type="checkbox"/> Every 2 Hours		<input type="checkbox"/> Use	<input type="checkbox"/> Improper Technique	
	<input type="checkbox"/> Clothing	<input type="checkbox"/> Chemically Restrained	<u>PARENTERAL FLUID/IV'S</u>		<input type="checkbox"/> Equipment Inadequate	<u>PATIENT RIGHTS</u>
	<input type="checkbox"/> Shoes/Slippers		<input type="checkbox"/> Present			<input type="checkbox"/> Privacy Not Maintained
<u>SKIN</u>	<input type="checkbox"/> Odors	<u>BOWEL/BLADDER</u>	<input type="checkbox"/> Rate Incorrect/Stopped	<u>DIETARY NEEDS</u>	<u>SOCIAL SERVICE NEEDS</u>	<input type="checkbox"/> Staff Not Courteous
<input type="checkbox"/> Tears/Wounds		<input type="checkbox"/> Incontinent	<input type="checkbox"/> Site Red/Swollen	<input type="checkbox"/> Over/Underweight	<input type="checkbox"/> Not Oriented	<input type="checkbox"/> Not Informed of Rights
<input type="checkbox"/> Ulcers		<input type="checkbox"/> Not Routinely Toileted	<input type="checkbox"/> Dressing Unclean	<input type="checkbox"/> Dehydrated	<input type="checkbox"/> Not Able to Converse	<input type="checkbox"/> Mental/Physical Abuse
<input type="checkbox"/> Rashes	<u>POSITIONING</u>	<input type="checkbox"/> Commode Not Available	<input type="checkbox"/> Unsafe Splint	<input type="checkbox"/> Emaciated	<input type="checkbox"/> Uncooperative/Disrupts	<input type="checkbox"/> Cannot Exercise Rights
<input type="checkbox"/> Flaking	<input type="checkbox"/> Need Present	<input type="checkbox"/> Schedule Not Available	<input type="checkbox"/> Improper Label	<input type="checkbox"/> Dull/Dry Hair	<input type="checkbox"/> Withdrawn	<input type="checkbox"/> Cannot Manage Affairs
<input type="checkbox"/> Scaling	<input type="checkbox"/> Contracted		<input type="checkbox"/> Outdated Solution	<input type="checkbox"/> Swollen/Red Tongue	<input type="checkbox"/> Anxious	
<input type="checkbox"/> Red Area	<input type="checkbox"/> Extremities	<u>CATHETER</u>	<input type="checkbox"/> No I/O Recording	<input type="checkbox"/> Bleeding Gums	<input type="checkbox"/> Confused	
	<input type="checkbox"/> Improper Position	<input type="checkbox"/> Present	<u>TRACHEOSTOMY</u>	<input type="checkbox"/> Cracked Lips	<input type="checkbox"/> Lonely	
<u>DECUBITUS</u>	<input type="checkbox"/> No Protective Device	<input type="checkbox"/> Inappropriate	<input type="checkbox"/> Present	<input type="checkbox"/> Inability to Chew	<input type="checkbox"/> Vision/Hearing Needs	
<input type="checkbox"/> Grade	<input type="checkbox"/> ROM Improper	<input type="checkbox"/> Poor Drainage	<input type="checkbox"/> Site Red/Swollen	<input type="checkbox"/> Swallowing Prob.	<input type="checkbox"/> Mentally Retarded	
<input type="checkbox"/> Foul Odor	<input type="checkbox"/> Lack of Turning as	<input type="checkbox"/> Drainage System Open	<input type="checkbox"/> Obstructed	<input type="checkbox"/> Pallor	<u>OTHER</u>	
<input type="checkbox"/> Draining	<input type="checkbox"/> Needed	<input type="checkbox"/> No Urine in Bag	<input type="checkbox"/> Unclean		<input type="checkbox"/>	
<input type="checkbox"/> Dressing	<input type="checkbox"/> Schedule Not Present	<input type="checkbox"/> Urine Leaking	<input type="checkbox"/> Improper Suctioning	<u>TUBE FEEDING</u>	<input type="checkbox"/>	
<input type="checkbox"/> Unclean	<input type="checkbox"/> Improper Techniques	<input type="checkbox"/> Abdomen Distended	<input type="checkbox"/> Equipment Not Available	<input type="checkbox"/> Present	<input type="checkbox"/>	
<input type="checkbox"/> Not Dry	<input type="checkbox"/> Aseptic/Other	<input type="checkbox"/> Tubing Not Clean	<input type="checkbox"/>	<input type="checkbox"/> Nutrition Inadequate	<input type="checkbox"/>	
<input type="checkbox"/> Not Intact		<input type="checkbox"/> No I/O Recording	<u>SUCTIONING</u>	<input type="checkbox"/> Poorly Tolerated	<input type="checkbox"/>	
<input type="checkbox"/> Poor Technique	<u>DRESSINGS</u>	<input type="checkbox"/> Supply Storage Unclean	<input type="checkbox"/> Need Present	<input type="checkbox"/> Vomits	<input type="checkbox"/>	
	<input type="checkbox"/> Present		<input type="checkbox"/> Audible Rates	<input type="checkbox"/> Dehydrated	<input type="checkbox"/>	
	<input type="checkbox"/> Unclean	<u>INJECTIONS</u>	<input type="checkbox"/> Labored Breathing	<input type="checkbox"/> Over/Underweight	<input type="checkbox"/>	
	<input type="checkbox"/> Not Dry	<input type="checkbox"/> Receives Injections	<input type="checkbox"/> Drainage	<input type="checkbox"/> Diarrhea/Constipation	<input type="checkbox"/>	
	<input type="checkbox"/> Not Intact	<input type="checkbox"/> Site Red/Swollen	<input type="checkbox"/> Equipment Not Available	<input type="checkbox"/> Poor Skin Condition	<input type="checkbox"/>	
	<input type="checkbox"/> Foul Odor	<input type="checkbox"/> Improper Technique		<input type="checkbox"/> Poor Mouth Condition	<input type="checkbox"/>	
	<input type="checkbox"/> Poor Technique	<input type="checkbox"/> Resident Reacts		<input type="checkbox"/> Improper Technique	<input type="checkbox"/>	

NOTES:

SEE REVERSE

Form HCFA-524 (2-86)

RECORD REVIEW			
ROUTINE REPORTS		INTERVENTION	
PLAN		EVALUATION	
<input type="checkbox"/> Drug Regimen Review (See SOM Appendix N Part 1) <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory			
ASSESSMENT			

PHYSICIAN SERVICES

- | | |
|---|---|
| <input type="checkbox"/> Admission Information | <input type="checkbox"/> Signs Orders/Notes |
| <input type="checkbox"/> Rehabilitation Information | <input type="checkbox"/> Required Visits |
| <input type="checkbox"/> Physical Exam | <input type="checkbox"/> Emergency Availability |
| <input type="checkbox"/> Written Care Plan | <input type="checkbox"/> Review of Care |

BILLING CODE 4120-01-C

* U S GPO 1986-0-181 284/53635

§ 488.110 Procedural guidelines.

SNF/ICF Survey Process. The purpose for implementing a new SNF/ICF survey process is to assess whether the quality of care, as intended by the law and regulations, and as needed by the resident, is actually being provided in nursing homes. Although the onsite review procedures have been changed, facilities must continue to meet all applicable Conditions/Standards, in order to participate in Medicare/Medicaid programs. That is, the methods used to compile information about compliance with law and regulations are changed; the law and regulations themselves are not changed. The new process differs from the traditional process, principally in terms of its emphasis on resident outcomes. In ascertaining whether residents grooming and personal hygiene needs are met, for example, surveyors will no longer routinely evaluate a facility's written policies and procedures. Instead, surveyors will observe residents in order to make that determination. In addition, surveyors will confirm, through interviews with residents and staff, that such needs are indeed met on a regular basis. In most reviews, then, surveyors will ascertain whether the facility is actually providing the required and needed care and services, rather than whether the facility is capable of providing the care and services.

The Outcome-Oriented Survey Process—Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)

- (a) General.
- (b) The Survey Tasks.
- (c) Task 1—Entrance Conference.
- (d) Task 2—Resident Sample—Selection Methodology.
- (e) Task 3—Tour of the Facility.
- (f) Task 4—Observation/Interview/Medical Record Review (including drug regimen review).
- (g) Task 5—Drug Pass Observation.
- (h) Task 6—Dining Area and Eating Assistance Observation.
- (i) Task 7—Forming the Deficiency Statement.
- (j) Task 8—Exit Conference.
- (k) Plan of Correction.
- (l) Followup Surveys.
- (m) Role of Surveyor.
- (n) Confidentiality and Respect for Resident Privacy.
- (o) Team Composition.
- (p) Type of Facility—Application of SNF or ICF Regulations.
- (q) Use of Part A and Part B of the Survey Report.

(a) *General.* A complete SNF/ICF facility survey consists of three components:

- Life Safety Code requirements;

- Administrative and structural requirements (Part A of the Survey Report, Form HCFA-525); and

- Direct resident care requirements (Part B of the Survey Report, Form HCFA-519), along with the related worksheets (HCFA-520 through 524).

Use this survey process for all surveys of SNFs and ICFs—whether freestanding, distinct parts, or dually certified. Do not use this process for surveys of Intermediate Care Facilities for Mentally Retarded (ICFs/MR), swing-bed hospitals or skilled nursing sections of hospitals that are not separately certified as SNF distinct parts. Do not announce SNF/ICF surveys ahead of time.

(b) *The Survey Tasks.* Listed below are the survey tasks for easy reference:

- Task 1. Entrance Conference.
- Task 2. Resident Sample—Selection Methodology.
- Task 3. Tour of the Facility. Resident Needs. Physical Environment. Meeting with Resident Council Representatives. Tour Summation and Focus of Remaining Survey Activity.
- Task 4. Observation/Interview/Medical Record. Review of Each Individual in the Resident Sample (including drug regimen review).
- Task 5. Drug Pass Observation.
- Task 6. Dining Area and Eating Assistance Observation.
- Task 7. Forming the Deficiency Statement (if necessary).
- Task 8. Exit Conference.

(c) *Task 1—Entrance Conference.* Perform these activities during the entrance conference in every certification and recertification survey:

- Introduce all members of the team to the facility staff, if possible, even though the whole team may not be present for the entire entrance conference. (All surveyors wear identification tags.)

- Explain the SNF/ICF survey process as resident centered in focus, and outline the basic steps.

- Ask the facility for a list showing names of residents by room number with each of the following care needs/treatments identified for each resident to whom they apply:

- Decubitus care
- Restraints
- Catheters
- Injections
- Parenteral fluids
- Rehabilitation service
- Colostomy/ileostomy care
- Respiratory care
- Tracheostomy care
- Suctioning
- Tube feeding

Use this list for selecting the resident sample.

- Ask the facility to complete page 2 of Form HCFA-519 (Resident Census) as soon as possible, so that the information can further orient you to the facility's population. In a survey of a SNF with a distinct part ICF, you may collect two sets of census data. However, consolidate the information when submitting it to the regional office. You may modify the Resident Census Form to include the numbers of licensed and certified beds, if necessary.

- Ask the facility to post signs on readily viewed areas (at least one on each floor) announcing that State surveyors are in the facility performing an "inspection," and are available to meet with residents in private. Also indicate the name and telephone number of the State agency. Hand-printed signs with legible, large letters are acceptable.

- If the facility has a Resident Council, make mutually agreeable arrangements to meet privately with the president and officers and other individuals they might invite.

- Inform the facility that interviews with residents and Resident Councils are conducted privately, unless they independently request otherwise, in order to enhance the development of rapport as well as to allay any resident anxiety. Tell the facility that information is gathered from interviews, the tour, observations, discussions, record review, and facility officials. Point out that the facility will be given an opportunity to respond to all findings.

(d) *Task 2—Resident Sample—Selection Methodology.* This methodology is aimed at formulating a sample that reflects the actual distribution of care needs/treatments in the facility population.

Primarily performed on a random basis, it also ensures representation in the sample of certain care needs and treatments that are assessed during the survey.

(1) *Sample Size.* Calculate the size of the sample according to the following guide:

Number of residents in facility	Number of residents in sample ¹
0-60 residents.	25% of residents (minimum—10).
61-120 residents.	20% of residents (minimum—15).
121-200 residents.	15% of residents (minimum—24).
201+ residents.	10% of residents (minimum—30).

¹ Maximum—50

Note that the calculation is based on the resident census, not beds. After determining the appropriate sample size, select residents for the sample in a random manner. You may, for example, select every fifth resident from the resident census, beginning at a random position on the list. For surveys of dually certified facilities or distinct part SNFs/ICFs, first use the combined SNF/ICF population to calculate the size of the sample, and then select a sample that reflects the proportions of SNF and ICF residents in the facility's overall population.

(2) *Special Care Needs/Treatments.* The survey form specifies several care needs/treatments that must always be reviewed when they apply to any facility residents. These include:

- Decubitus Care
- Restraints
- Catheters
- Injections, Parenteral Fluids, Colostomy/Ileostomy, Respiratory Care, Tracheostomy Care, Suctioning, Tube Feeding
- Rehabilitative Services (physical therapy, speech pathology and audiology services, occupational therapy)

Due to the relatively low prevalence of these care needs/treatments, appropriate residents may be either under-represented or entirely omitted from the sample. Therefore, determine during the tour how many residents in the random selection fall into each of these care categories. Then, compare the number of such residents in the random selection with the total number of residents in the facility with each specified care need/treatment (based on either the resident census or other information provided by the facility).

Review not less than 25 percent of the residents in each of these special care needs/treatments categories. For example, if the facility has 10 residents with decubitus ulcers, but only one of these residents is selected randomly, review two more residents with decubitus ulcers (25% of 10 equals 2.5, so review a total of 3). Or, if the facility has two residents who require tube feeding, neither of whom is in the random selection, review the care of at least one of these residents. This can be accomplished in the following manner:

Conduct in-depth reviews of the randomly selected residents and then perform limited reviews of additional residents as needed to cover the specified care categories. Such reviews are limited to the care and services related to the pertinent care areas only, e.g., catheters, restraints, or colostomy. Utilize those worksheets or portions of

worksheets which are appropriate to the limited review. Refer to the Care Guidelines, as a resource document, when appropriate.

Always keep in mind that neither the random selection approach nor the review of residents within the specified care categories precludes investigation of other resident care situations that you believe might pose a serious threat to a resident's health or safety. Add to the sample, as appropriate.

(e) *Task 3—Tour of the Facility.* (1) *Purpose.* Conduct the tour in order to:

- Develop an overall picture of the types and patterns of care delivery present within the facility;
- View the physical environment; and
- Ascertain whether randomly selected residents are communicative and willing to be interviewed.

(2) *Protocol.* You may tour the entire facility as a team or separately, as long as all areas of the facility are examined by at least one team member. Success of the latter approach, however, is largely dependent on open intra-team communication and the ability of each team member to identify situations for further review by the team member of the appropriate discipline. You may conduct the tour with or without facility staff accompanying you, as you prefer. Facilities, however, vary in staff member availability. Record your notes on the Tour Notes Worksheet, Form HCFA-521.

Allow approximately three hours for the tour. Converse with residents, family members/significant others (if present), and staff, asking open-ended questions in order to confirm observations, obtain additional information, or corroborate information, (e.g., accidents, odors, apparent inappropriate dress, adequacy and appropriateness of activities). Converse sufficiently with residents selected for in-depth review to ascertain whether they are willing to be interviewed and are communicative. Observe staff interactions with other staff members as well as with residents for insight into matters such as resident rights and assignments of staff responsibilities.

Always knock and/or get permission before entering a room or interrupting privacy. If you wish to inspect a resident's skin, observe a treatment procedure, or observe a resident who is exposed, courteously ask permission from the resident if she/he comprehends, or ask permission from the staff nurse if the resident cannot communicate. Do not do "hands-on" monitoring such as removal of dressings; ask staff to remove a dressing or handle a resident.

(3) *Resident Needs.* While touring, focus on the residents' needs—physical, emotional, psychosocial, or spiritual—and whether those needs are being met. Refer to the following list as needed:

- Personal hygiene, grooming, and appropriate dress
- Position
- Assistive and other restorative devices
- Rehabilitation issues
- Functional limitations in ADL
- Functional limitations in gait, balance and coordination
- Hydration and nutritional status
- Resident rights
- Activity for time of day (appropriate or inappropriate)
- Emotional status
- Level of orientation
- Awareness of surroundings
- Behaviors
- Cleanliness of immediate environment (wheelchair, bed, bedside table, etc.)
- Odors
- Adequate clothing and care supplies as well as maintenance and cleanliness of same

(4) *Review of the Physical Environment.* As you tour each resident's room and auxiliary rooms, also examine them in connection with the physical environment requirements. You need not document physical environment on the Tour Notes Worksheet. Instead, you may note any negative findings directly on the Survey Report Form in the remarks section.

(5) *Meeting With Resident Council Representatives.* If a facility has a Resident Council, one or more surveyors meet with the representatives in a private area. Facility staff members do not attend unless specifically requested by the Council. Explain the purpose of the survey and briefly outline the steps in the survey process, i.e., entrance conference * * * exit conference. Indicate your interest in learning about the strengths of the facility in addition to any complaints or shortcomings. State that this meeting is one part of the information gathering; the findings have not yet been completed nor the conclusions formulated. Explain further, however, that the official survey findings are usually available within three months after the completion of the survey, and give the telephone number of the State agency office.

Use this meeting to ascertain strengths and/or problems, if any, from the consumer's perspective, as well as to develop additional information about aspects of care and services gleaned during the tour that were possibly substandard.

Conduct the meeting in a manner that allows for comments about any aspect of the facility. (See the section on Interview Procedures.) Use open-ended questions such as:

- "What is best about this home?"
- "What is worst?"
- "What would you like to change?"

In order to get more detail, use questions such as:

- "Can you be more specific?"
- "Can you give me an example?"
- "What can anyone else tell me about this?"

If you wish to obtain information about a topic not raised by the residents, use an approach like the following:

- "Tell me what you think about the food/staff/cleanliness here."
- "What would make it better?"
- "What don't you like? What do you like?"

(6) *Tour Summation and Focus of Remaining Survey Activity.* When the tour is completed, review the resident census data provided by the facility. Determine if the care categories specified in the section on Resident Sample are sufficiently represented in the random selection, make adjustments as needed, and complete the listing of residents on the worksheet labeled "Residents Selected for In-depth Review", Form HCFA-520.

Transcribe notes of a negative nature onto the SRF in the "Remarks" column under the appropriate rule. Findings from a later segment in the survey or gathered by another surveyor may combine to substantiate a deficiency. You need not check "met" or "not met" at this point in the survey. Discuss significant impressions/conclusions at the completion of each subsequent survey task, and transfer any negative findings onto the Survey Report Form in the Remarks section.

(f) *Task 4—Observation/Interview/Medical Record Review (including drug regimen review).* Perform the in-depth review of each individual in the resident sample in order to ascertain whether the facility is meeting resident needs. Evaluate specific indicators for each resident, utilizing the front and back of the "Observation/Interview/Record Review (OIRR)" worksheet, Form HCFA-524. You may prefer to perform the record review first, complete resident/staff/family observations and interviews, and finally, return to the record for any final unresolved issues. On the other hand, you may prefer to do the interviews first. Either method is acceptable. Whenever possible, however, complete one resident's

observation/interview/medical record review and document the OIRR before moving onto another resident. If because of the facility layout, it is more efficient to do more than one record review at a time, limit such record review to two or three residents so your familiarity with the particular resident and continuity of the OIRR are not compromised.

(1) *Observation.* Conduct observations concurrently with interviews of residents, family/significant others, and discussions with direct care staff [of the various disciplines involved. In multi-facility operations, whenever possible, observe staff that is regularly assigned to the facility in order to gain an understanding of the care and services usually provided.] Maintain respect for resident privacy. Minimize disruption of the operations of the facility or impositions upon any resident as much as possible. Based upon your observations of the residents' needs, gather information about any of the following areas, as appropriate:

- Bowel and bladder training
- Catheter care
- Restraints
- Injections
- Parenteral fluids
- Tube feeding/gastrostomy
- Colostomy/ileostomy
- Respiratory therapy
- Tracheostomy care
- Suctioning

(2) *Interviews.* Interview each resident in private unless he/she independently requests that a facility staff member or other individual be present. Conduct the in-depth interview in a nonthreatening and noninvasive fashion so as to decrease anxiety and defensiveness. The open-ended approach described in the section on the Resident Council is also appropriate for the in-depth interview. While prolonged time expenditure is not usually a worthwhile use of resources or the resident's time, do allow time initially to establish rapport.

At each interview:

- Introduce yourself.
- Address the resident by name.
- Explain in simple terms the reason for your visit (e.g., to assure that the care and services are adequate and appropriate for each resident).
- Briefly outline the process—entrance conference, tour, interviews, observations, review of medical records, resident interviews, and exit conference.
- Mention that the selection of a particular resident for an interview is not meant to imply that his/her care is substandard or that the facility provides substandard care. Also mention that

most of those interviewed are selected randomly.

- Assure that you will strive for anonymity for the resident and that the interview is used in addition to medical records, observations, discussions, etc., to capture an accurate picture of the treatment and care provided by the facility. Explain that the official findings of the survey are usually available to the public about three months after completion of the survey, but resident names are not given to the public.

- When residents experience difficulty expressing themselves:

- Avoid pressuring residents to verbalize
- Accept and respond to all communication
- Ignore mistakes in word choice
- Allow time for recollection of words
- Encourage self-expression through any means available

- When interviewing residents with decreased receptive capacity:

- Speak slowly and distinctly
- Speak at conversational voice level
- Sit within the resident's line of vision
- Listen to all resident information/allegations without judgment. Information gathered subsequently may substantiate or repudiate an allegation.

The length of the interview varies, depending on the condition and wishes of the resident and the amount of information supplied. Expect the average interview, however, to last approximately 15 minutes. Courteously terminate an interview whenever the resident is unable or unwilling to continue, or is too confused or disoriented to continue. Do, however, perform the other activities of this task (observation and record review). If, in spite of your conversing during the tour, you find that less than 40 percent of the residents in your sample are sufficiently alert and willing to be interviewed, try to select replacements so that a complete OIRR is performed for a group this size, if possible. There may be situations, however, where the resident population has a high percentage of confused individuals and this percentage is not achievable. Expect that the information from confused individuals can be, but is not necessarily, less reliable than that from more alert individuals.

Include the following areas in the interview of each resident in the sample:

- Activities of daily living
- Grooming/hygiene
- Nutrition/dietary
- Restorative/rehabilitation care and services

Activities Social services Resident rights

Refer to the Care Guidelines "evaluation factors" as a resource for possible elements to consider when focusing on particular aspects of care and resident needs.

Document information obtained from the interviews/observations on the OIRR Worksheet. Record in the "Notes" section any additional information you may need in connection with substandard care or services. Unless the resident specifically requests that he/she be identified, do not reveal the source of the information gleaned from the interview.

(3) *Medical Record Review.* The medical record review is a three-part process, which involves first reconciling the observation/interview findings with the record, then reconciling the record against itself, and lastly performing the drug regimen review.

Document your findings on the OIRR Worksheet, as appropriate, and summarize on the Survey Report Form the findings that are indicative of problematic or substandard care. Be alert for repeated similar instances of substandard care developing as the number of completed OIRR Worksheets increases.

Note: The problems related to a particular standard or condition could range from identical (e.g., meals not in accordance with dietary plan) to different but related (e.g., nursing services—lapse in care provided to residents with catheters, to residents with contractures, to residents needing assistance for personal hygiene and residents with improperly applied restraints).

(i) Reconciling the observation/interview findings with the record.

Determine if:

- An assessment has been performed.
- A plan with goals has been developed.
- The interventions have been carried out.
- The resident has been evaluated to determine the effectiveness of the interventions.

For example, if a resident has developed a decubitus ulcer while in the facility, record review can validate staff and resident interviews regarding the facility's attempts at prevention. Use your own judgment; review as much of the record(s) as necessary to evaluate the care planning. Note that facilities need not establish specific areas in the record stating "Assessment," "Plan," "Intervention," or "Evaluation" in order for the documentation to be considered adequate.

(ii) Reconciling the record with itself.

Determine:

- If the resident has been properly assessed for all his/her needs.
- That normal and routine nursing practices such as periodic weights, temperatures, blood pressures, etc., are performed as required by the resident's conditions.

(iii) *Performing the drug regimen review.* The purpose of the drug regimen review is to determine if the pharmacist has reviewed the drug regimen on a monthly basis. Follow the procedures in Part One of Appendix N, Surveyor Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities. Fill in the appropriate boxes on the top left hand corner of the reverse side of the OIRR Worksheet, Form HCFA-524. Appendix N lists many irregularities that can occur. Review at least six different indicators on each survey. However, the same six indicators need not be reviewed on every survey.

Note: If you detect irregularities and the documentation demonstrates that the pharmacist has notified the attending physician, do not cite a deficiency. Do, however, bring the irregularity to the attention of the medical director or other facility official, and note the official's name and date of notification on the Survey Report Form.

(g) Task 5—Drug Pass Observation.

The purpose of the drug pass observation is to observe the actual preparation and administration of medications to residents. With this approach, there is no doubt that the errors detected, if any, are errors in drug administration, not documentation. Follow the procedure in Part Two of Appendix N, Surveyor Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities, and complete the Drug Pass Worksheet, Form HCFA-522. Be as neutral and unobtrusive as possible during the drug pass observation. Whenever possible, select one surveyor, who is a Registered Nurse or a pharmacist, to observe the drug pass of approximately 20 residents. In facilities where fewer than 20 residents are receiving medications, review as many residents receiving medications as possible. Residents selected for the in-depth review need not be included in the group chosen for the drug pass; however, their whole or partial inclusion is acceptable. In order to get a balanced view of a facility's practices, observe more than one person administering a drug pass, if feasible. This might involve observing the morning pass one day in Wing A, for example, and the morning pass the next day in Wing B.

Transfer findings noted on the "Drug Pass" worksheet to the SRF under the appropriate rule. If your team concludes that the facility's medication error rate is 5 percent or more, cite the deficiency under Nursing Services/Administration of Drugs. Report the error rate under F209. If the deficiency is at the standard level, cite it in Nursing Services, rather than Pharmacy.

(h) *Task 6—Dining Area and Eating Assistance Observation.* The purpose of this task is to ascertain the extent to which the facility meets dietary needs, particularly for those who require eating assistance. This task also yields information about staff interaction with residents, promptness and appropriateness of assistance, adaptive equipment usage and availability, as well as appropriateness of dress and hygiene for meals.

For this task, use the worksheet entitled "Dining Area and Eating Assistance Observation" [Form HCFA-523]. Observe two meals; for a balanced view, try to observe meals at different times of the day. For example, try to observe a breakfast and a dinner rather than two breakfasts. Give particular care to performing observations as unobtrusively as possible. Chatting with residents and sitting down nearby may help alleviate resident anxiety over the observation process.

Select a minimum of five residents for each meal observation and include residents who have their meals in their rooms. Residents selected for the in-depth review need not be included in the dining and eating assistance observation; however, their whole or partial inclusion is acceptable. Ascertain the extent to which the facility assesses, plans, and evaluates the nutritional care of residents and eating assistance needs by reviewing the sample of 10 or more residents. If you are unable to determine whether the facility meets the standards from the sample reviewed, expand the sample and focus on the specific area(s) in question, until you can formulate a conclusion about the extent of compliance. As with the other survey tasks, transfer the findings noted on the "Dining & Eating Assistance Observation" worksheet to the Survey Report Form.

(i) *Task 7—Forming the Deficiency Statement.* (1) *General.* The Survey Report Form contains information about all of the negative findings of the survey. Be sure to transfer to the Survey Report Form data from the tour, drug pass observation, dining area and eating assistance observation, as well as in-depth review of the sample of residents.

Transfer only those findings which could possibly contribute to a determination that the facility is deficient in a certain area.

Meet as a group in a pre-exit conference to discuss the findings and make conclusions about the deficiencies, subject to information provided by facility officials that may further explain the situation. Review the summaries/conclusions from each task and decide whether any further information and/or documentation is necessary to substantiate a deficiency. As the facility for additional information for clarification about particular findings, if necessary. Always consider information provided by the facility. If the facility considers as acceptable, practices which you believe are not acceptable, ask the facility to backup its contention with suitable reference material or sources and submit them for your consideration.

(2) *Analysis.* Analyze the findings on the Survey Report Form for the degree of severity, frequency of occurrence and impact on delivery of care or quality of life. The threshold at which the frequency of occurrences amounts to a deficiency varies from situation to situation. One occurrence directly related to a life-threatening or fatal outcome can be cited as a deficiency. On the other hand, a few sporadic occurrences may have so slight an impact on delivery of care or quality of life that they do not warrant a deficiency citation. Review carefully all the information gathered. What may appear during observation as a pattern, may or may not be corroborated by records, staff, and residents. For example, six of the 32 residents in the sample are dressed in mismatched, poorly buttoned clothes. A few of the six are wearing slippers without socks. A few others are wearing worn clothes. Six occurrences might well be indicative of a pattern of substandard care. Close scrutiny of records, discussions with staff, and interviews reveal, however, that the six residents are participating in dressing retraining programs. Those residents who are without socks, chose to do so. The worn clothing items were also chosen—they are favorites.

Combinations of substandard care such as poor grooming of a number of residents, lack of ambulation of a number of residents, lack of attention to positioning, poor skin care, etc., can yield a deficiency in nursing services just as 10 out of 10 residents receiving substandard care for decubiti yields a deficiency.

(3) *Deficiencies Alleged by Staff or Residents.* If staff or residents allege deficiencies, but records, interviews,

and observation fail to confirm the situation, it is unlikely that a deficiency exists. Care and services that are indeed confirmed by the survey to be in compliance with the regulatory requirements, but considered deficient by residents or staff, cannot be cited as deficient for certification purposes. On the other hand, if an allegation is of a very serious nature (e.g., resident abuse) and the tools of record review and observation are not effective because the problem is concealed, obtain as much information as possible or necessary to ascertain compliance, and cite accordingly. Residents, family, or former employees may be helpful for information gathering.

(4) *Composing the Deficiency Statement.* Write the deficiency statement in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the requirement(s) that is (are) not met. Do not delve into the facility's policies and procedures to determine or speculate on the root cause of a deficiency, or sift through various alternatives in an effort to prescribe an acceptable remedy. Indicate the data prefix tag and regulatory citation, followed by a summary of the deficiency and supporting findings using resident identifiers, not resident names, as in the following example.

F102 SNF 405.1123(b).—Each resident has not had a physician's visit at least once every 30 days for the first 90 days after admission. Resident #1602 has not been seen by a physician since she was admitted 50 days ago. Her condition has deteriorated since that time (formulation of decubiti, infections).

When the data prefix tag does not repeat the regulations, also include a short phrase that describes the prefix tag (e.g., F117 decubitus ulcer care). List the data tags in numerical order, whenever possible.

(j) *Task 8—Exit Conference.* The purpose of the exit conference is to inform the facility of survey findings and to arrange for a plan of correction, if needed. Keep the tone of the exit conference consistent with the character of the survey process—inspection and enforcement. Tactful, business-like, professional presentation of the findings is of paramount importance. Recognize that the facility may wish to respond to various findings. Although deficiency statements continue to depend, in part, on surveyor professional judgment, support your conclusions with resident-specific examples (identifiers other than names) whenever you can do so without compromising confidentiality. Before formally citing deficiencies, discuss any allegations or findings that could not be

substantiated during earlier tasks in the process. For example, if information is gathered that suggests a newly hired R.N. is not currently licensed, ask the facility officials to present current licensure information for the nurse in question. Identify residents when the substandard care is readily observed or discerned through record review. Ensure that the facility improves the care provided to all affected residents, not only the identified residents. Make clear to the facility that during a follow-up visit the surveyors may review residents other than those with significant problems from the original sample, in order to see that the facility has corrected the problems overall. Do not disclose the source of information provided during interviews, unless the resident has specifically requested you to inform the facility of his/her comments or complaints. In accordance with your Agency's policy, present the Statement of Deficiencies, form HCFA-2567, on site or after supervisory review, no later than 10 calendar days following the survey.

(k) *Plan of Correction.* Explain to the facility that your role is to identify care and services which are not consistent with the regulatory requirements, rather than to ascertain the root causes of deficiencies. Each facility is expected to review its own care delivery. Subsequent to the exit conference, each facility is required to submit a plan of correction that identifies necessary changes in operation that will assure correction of the cited deficiencies. In reviewing and accepting a proposed plan of correction, apply these criteria:

- Does the facility have a reasonable approach for correcting the deficiencies?
- Is there a high probability that the planned action will result in compliance?
- Is compliance expected timely?

Plans of correction specific to residents identified on the deficiency statement are acceptable only where the deficiency is determined to be unique to that resident and not indicative of a possible systemic problem. For example, as a result of an aide being absent, two residents are not ambulated three times that day as called for in their care plans. A plan of correction that says "Ambulate John Jones and Mary Smith three times per day," is not acceptable. An acceptable plan of correction would explain changes made to the facility's staffing and scheduling in order to guarantee that staff is available to provide all necessary services for all residents.

Acceptance of the plan of correction does not absolve the facility of the responsibility for compliance should the implementation not result in correction and compliance. Acceptance indicates the State agency's acknowledgement that the facility indicated a willingness and ability to make corrections adequately and timely.

Allow the facility up to 10 days to prepare and submit the plan of correction to the State agency, however, follow your SA policy if the timeframe is shorter. Retain the various survey worksheets as well as the Survey Report Form at the State agency. Forward the deficiency statement to the HCFA regional office.

(l) *Follow-up Surveys.* The purpose of the follow-up survey is to re-evaluate the specific types of care or care delivery patterns that were cited as deficient during the original survey. Ascertain the corrective status of all deficiencies cited on the HCFA-2567. Because this survey process focuses on the actual provision of care and services, revisits are almost always necessary to ascertain whether the deficiencies have indeed been corrected. The nature of the deficiencies dictates the scope of the follow-up visit. Use as many tasks or portions of the Survey Report Form(s) as needed to ascertain compliance status. For example, you need not perform another drug pass if no drug related deficiencies were cited on the initial survey. Similarly, you need not repeat the dining area and eating assistance observations if no related problems were identified. All or some of the aspects of the observation/interview/medical record review, however, are likely to be appropriate for the follow-up survey. When selecting the resident sample for the follow-up, determine the sample size using the same formula as used earlier in the survey, with the following exceptions:

- The maximum sample size is 30 residents, rather than 50.
- The minimum sample size of 10 residents does not apply if only one care category was cited as deficient and the total number of residents in the facility in that category was less than 10 (e.g., deficiency cited under catheter care and only five residents have catheters).

Include in the sample those residents who, in your judgment, are appropriate for reviewing vis-a-vis the cited substandard care. If possible, include some residents identified as receiving substandard care during the initial survey. If after completing the follow-up activities you determine that the cited deficiencies were not corrected, initiate

adverse action procedures, as appropriate.

(m) *Role of Surveyor.* The survey and certification process is intended to determine whether providers and suppliers meet program participation requirements. The primary role of the surveyor, then, is to assess the quality of care and services and to relate those findings to statutory and regulatory requirements for program participation.

When you find substandard care or services in the course of a survey, carefully document your findings. Explain the deficiency in sufficient detail so that the facility officials understand your rationale. If the cause of the deficiency is obvious, share the information with the provider. For example, if you cite a deficiency for restraints (F118), indicate that restraints were applied backwards on residents 1621, 1634, 1646, etc.

In those instances where the cause is not obvious, do not delve into the facility's policies and procedures to determine the root cause of any deficiency. Do not recommend or prescribe an acceptable remedy. The provider is responsible for deciding on and implementing the action(s) necessary for achieving compliance. For the restraint situation in the example above, you would not ascertain whether the improper application was due to improper training or lack of training, nor would you attempt to identify the staff member who applied the restraints. It is the provider's responsibility to make the necessary changes or corrections to ensure that the restraints are applied properly.

A secondary role for the surveyor is to provide general consultation to the provider/consumer community. This includes meeting with provider/consumer associations and other groups as well as participating in seminars. It also includes informational activities, whereby you respond to oral or written inquiries about required outcomes in care and services.

(n) *Confidentiality and Respect for Resident Privacy.* Conduct the survey in a manner that allows for the greatest degree of confidentiality for residents, particularly regarding the information gathered during the in-depth interviews. When recording observations about care and resident conditions, protect the privacy of all residents. Use a code such as resident identifier number rather than names on worksheets whenever possible. Never use a resident's name on the Deficiency Statement, Form HCFA-2567. Block out resident names, if any, from any document that is disclosed to the facility, individual or organization.

When communicating to the facility about substandard care, fully identify the resident(s) by name if the situation was identified through observation or record review. Improperly applied restraints, expired medication, cold food, gloves not worn for a sterile procedure, and diet inconsistent with order, are examples of problems which can be identified to the facility by resident name. Information about injuries due to broken equipment, prolonged use of restraints, and opened mail is less likely to be obtained through observation or record review. Do not reveal the source of information unless actually observed, discovered in the record review, or requested by the resident or family.

(o) *Team Composition.* Whenever possible, use the following survey team model:

SNF/ICF Survey Team Model

In facilities with 200 beds or less, the team size may range from 2 to 4 members. If the team size is:

- *2 members:* The team has at least one RN plus another RN or a dietitian or a pharmacist.
- *3-4 member:* In addition to the composition described above, the team has one or two members of any discipline such as a social worker, sanitarian, etc.

If the facility has over 200 beds and the survey will last more than 2 days, the team size may be greater than 4 members. Select additional disciplines as appropriate to the facility's compliance history.

Average onsite time per survey: 60 person hours (Number of surveyors multiplied by the number of hours on site)

Preferably, team members have gerontological training and experience. Any member may serve as the team leader, consistent with State agency procedures. In followup surveys, select disciplines based on major areas of correction. Include a social worker, for example, if the survey revealed major psychosocial problems. This model does not consider integrated survey and inspection of care review teams, which typically would be larger.

(p) *Type of Facility—Application of SNF or ICF Regulations.* Apply the regulations to the various types of facilities in the following manner:

- | | |
|---|------------------------|
| • Freestanding Skilled Nursing Facility (SNF) | Apply SNF regulations. |
| • Freestanding Intermediate Care Facility (ICF) | Apply ICF regulations. |

- SNF Distinct Part of a Hospital Apply SNF regulations.
- ICF Distinct Part of a Hospital Apply ICF regulations.
- Dually Certified SNF/ICF Apply SNF regulations and 442.346(b).
- Freestanding SNF with ICF Distinct Part Apply SNF regulations for SNF unit. Apply ICF regulations for ICF distinct part. Apply both SNF and ICF regulations for shared services (e.g., dietary).
 - If the same deficiency occurs in both the SNF and ICF components of the facility, cite both SNF and ICF regulations.
 - If the deficiency occurs in the SNF part only, cite only the SNF regulation.
 - If the deficiency occurs in the ICF part only, cite only the ICF regulation.

(q) *Use of Part A and Part B of the Survey Report.* (1) *Use of Part A (HCFA-525).*—Use Part A for initial certification surveys only, except under the following circumstances:

- When a terminated facility requests program participation 60 days or more after termination. Treat this situation as a request for initial certification and complete Part A of the survey report in addition to Part B.

- If an ICF with a favorable compliance history requests to convert a number of beds to SNF level, complete both Part A and Part B for compliance with the SNF requirements. If distinct part status is at issue, also examine whether it meets the criteria for certification as a distinct part.

(i) *Addendum for Outpatient Physical Therapy (OPT) or Speech Pathology Services.* Use the Outpatient Physical Therapy—Speech Pathology SRF (HCFA-1893) as an addendum to Part A.

(ii) *Resurvey of Participating Facilities.* Do not use Part A for resurveys of participating SNFs and ICFs. A determination of compliance, based on documented examination of the written policies and procedures and other pertinent documents during the initial survey, establishes the facility's compliance status with Part A requirements. This does not preclude citing deficiencies if they pertain to administrative or structural requirements from Part A that are uncovered incidental to a Part B survey. As an assurance measure, however, each facility at the time of recertification must complete an affidavit (on the HCFA-1516) attesting that no substantive changes have occurred that would affect compliance. Each facility must also agree to notify the State agency immediately of any upcoming changes in its organization or management which may affect its compliance status. If a new administrator is unable to complete the affidavit, proceed with the survey using the Part B form and worksheets; do not use the Part A form. The survey cannot be considered complete, however, until the affidavit is signed. If the facility fails to complete the affidavit, it cannot participate in the program.

(iii) *Substantial Changes in a Facility's Organization and Management.* If you receive such information, review the changes to

ensure compliance with the regulations. Request copies of the appropriate documents (e.g., written policies and procedures, personnel qualifications, or agreements) if they were not submitted. If the changes have made continued compliance seem doubtful, determine through a Part B survey whether deficiencies have resulted. Cite any deficiencies on the HCFA-2567 and follow the usual procedures.

(2) *Use of Part B (HCFA-519).* Use Part B and the worksheets for all types of SNF and ICF surveys—initials, recertifications, followup, complaints, etc.

The worksheets are:

- HCFA-520—Residents Selected for In-depth Review
- HCFA-521—Tour Notes Worksheet
- HCFA-522—Drug Pass Worksheet
- HCFA-523—Dining Area and Eating Assistance Worksheet
- HCFA-5245—Observation/Interview/Record Review Worksheet

For complaint investigations, perform a full or partial Part B survey based on the extent of the allegations. If the complaint alleges substandard care in a general fashion or in a variety of services and care areas, perform several tasks or a full Part B survey, as needed. If the complaint is of a more specific nature, such as an allegation of improper medications, perform an appropriate partial Part B survey, such as a drug pass review and a review of selected medical records.

BILLING CODE 4120-01-M

§ 488.115 Care guidelines.

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Resident Rights					
F53 SNF 405.1121(k)(1) ICF 442.311(a)		Ask Resident: - Did you receive a copy of the Resident's Bill of Rights? Was it explained to you?	Looked for signed acknowledgement of receipt of resident rights information. Residents unable to sign name may have their "mark" witnessed.	Because of the confusion surrounding admission to a new facility and the large amount of information given to a resident or resident's family on admission, information given at this time is often forgotten. Therefore, surveyor should verify resident's recollection with staff interviews and record checks.	Notification of Change in Status 405.1121(j) 442.307
F54 SNF 405.1121(h)(1) ICF 442.311(a)(1)			Look for written statement of charges services.	Written information on services and costs must be given to the resident, as well as copies of residents rights and responsibilities. Copies of residents' rights should also be available to patients and visitors, e.g., in resident lounges, lobbies, or other area where residents and visitors could easily see and read them.	Patient Care Policies 405.1121(e) 442.308 442.309 442.310 442.305
A. Information*	Where is information concerning resident rights and responsibilities available in the facility?	- Were you told of any responsibilities you have in living here?	Social Work records may indicate patient rights information discussed with resident.		Medical Direction 405.1122(a) Medical Records 405.1132(b)(d) 442.310
F56 SNF 405.1121(k)(1) ICF 442.311(a)(3)		- Were you given a chance to ask questions?			
F57 SNF 405.1121(h)(2) ICF 442.311(a)(4)		- Did he/she receive a written copy of services provided by the facility and any additional costs for these services?			
3. Resident Acknowledgement					

INTENT

To assure that the resident maintains, in so far as possible, those personal rights that are a part of normal, adult life, and including the right to personal dignity.

*Information concerning incompetent residents is given in L. Delegation of Rights and Responsibilities.

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F58 SNF 405.1121(k)(2) ICF 442.311(a)(4) 4. Resident informed in writing of changes in services and charges for services. F59 SNF 405.1121(k)(2) ICF 442.311(a)(4) 5. Information to resident of services not covered by Medicare or Medicaid and not covered in the basic rate.		Ask Resident: - If there are changes in services or costs does someone explain these? Ask Administrative Staff: - How do residents learn what is expected of them? - How do they learn about any changes in the facility's procedures and/or costs?			

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
B. Medical Condition & Treatment F60-64 SNF 405.1121(k)(2) ICF 442.311(b)		<p>Ask Resident:</p> <ul style="list-style-type: none"> - Has your doctor discussed your health with you, how is it, what's wrong, and what you can expect in the future? - Have you had the opportunity to help plan what you need and how you are taken care of? - Do you know that you can refuse treatment or medication? - Have you ever refused medication or treatment? - What happened when you did? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Is the facility participating in any experimental research? - If yes, ask what residents are involved. - Interview a sample of these residents. <p>Ask Resident (or Guardian):</p> <ul style="list-style-type: none"> - Are you participating in the _____ study? - Was this explained to you well enough so that you understand what the study is about and any risks that may be involved? 	<p>If the resident has not been informed of his/her medical condition, physician notes should document that the resident was not informed because it was medically contraindicated.</p> <p>Do care plans or other documentation reflect resident participation in care planning?</p> <p>If resident states he/she has refused treatment or medication does documentation indicate adherence to/violation of resident rights.</p> <p>Review records of residents identified as participating in a clinical research study. Are informed consent forms signed? Do these signed forms list all known risks for the resident?</p> <p>All needed informed consent statements are present and properly signed.</p>	<p>Unless there is documentation that the resident's medical condition should not be discussed with him/her resident interviews/record reviews should indicate that the resident and physician have discussed his/her medical condition.</p> <p>If you cannot confirm that this has occurred, interview staff to get further clarification.</p> <p>Almost all residents who are able to participate to some extent in their care planning do so. You should find evidence of this for the majority of the residents (e.g., care planning interview, nurses notes, social worker progress notes).</p> <p>Residents do have the right to refuse medication or other treatment, but you would expect that the facility would discuss the implications of this refusal with the resident and possibly do some "gentle persuasion".</p>	<p>Patient Care Management 405.1124(d) 442.319 442.341</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F60-64 (cont'd)				<p>However, except in an emergency situation force should never be used to compel a resident to accept medication or treatment.</p> <p>Deceit is also a violation of resident rights, except in the case of therapeutically indicated placebos ordered by the physician.</p> <p>Any resident participating in research studies should fully understand the implication of the study.</p> <p>The facility is not in compliance with the resident rights regulation if the resident consents to participate in a clinical study without full knowledge of the study. (Record review only as other nonclinical studies may not require informed consent).</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
C. Transfer and Discharge F65-68 SNF 405.1121(k)(4) ICF 442.311(c)	Look for residents that may be inappropriately placed physically - an alert resident rooming with a confused, noisy resident; very ill resident placed far from the nurses station; residents not compatible with each other, (e.g., different life-styles, habits, etc.).	<p>Ask Resident:</p> <ul style="list-style-type: none"> - How well do you get along with your roommate? - Have you ever been moved from one room to another? If yes, why? - How were you involved in the decision to move? - How much time was there between the time they told you you were to be moved, and when you were moved? - Have you asked for your room to be changed? <p>Ask Direct Care and Other Staff:</p> <ul style="list-style-type: none"> - What are some of the reasons residents rooms are changed? - What are some of the reasons for discharge of residents or transfer to a hospital or LTC facility? - How are residents involved in the decision to move? - If a resident requests a room change, how is this handled? - When a resident requests a room change are the following areas of consideration presented and discussed: 	<p>Nursing, physician, and/or social service progress notes should indicate reason for transfer and discussion with resident and/or family/guardian.</p> <p>If staff interviews give you cause to feel that transfers and discharges may be in violation of these regulations, review a sample of closed records for transfer information on how it was handled.</p> <p>If residents are transferred between facilities with common ownership and similar levels of care, transfers must be reviewed to determine reasons for transfer. Efforts to maintain the census is not an acceptable reason for transfer.</p> <p>Do discharge records review:</p> <ul style="list-style-type: none"> - reason for discharge, medical non-payment or need for different level of care? 	<p>To be in compliance with transfer and discharge regulations the facility must be able to confirm that all discharges/transfers were for medical or resident welfare reasons, or non-payment. Welfare reasons include physical, emotional, social issues.</p> <p>Transfers and discharges made solely for the convenience of the facility are unacceptable.</p> <p>(Relocation to accommodate contagious or other disorders requiring isolation procedures are not for the convenience of the facility).</p>	<p>Status Change Notification 405.1121(j)</p> <p>Medical Records 405.1132(c)(e) 442.318(c)(4)</p> <p>Transfer Agreement 405.1133(a)(2) 442.307(b)(1)(2)</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F65-68 (cont'd)		<ul style="list-style-type: none">+ cost factors+ resident welfare+ resident's reason for requesting the move+ facility's assessment of whether the move would be beneficial or not for the resident.			

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Exercising Rights F69 SNF 405.1121(k)(5) ICF 442.311(d)	Do residents appear comfortable when speaking to the surveyors as opposed to being afraid that someone may see them or overhear their conversation?	<p><u>Ask Resident:</u></p> <ul style="list-style-type: none"> - Do you belong to, or have representation on the resident council? - Are you informed of changes in the facility that will affect you? - Are you given a chance to express views on these changes prior to their implementation? - Does the facility assist in arranging for you to vote either at the polls or via absentee ballot? - Are you assisted in obtaining legal or Social Services if needed? - Do you feel comfortable in expressing yourself freely or are you concerned about retaliation? - Is staff/administration responsive to complaints? Do you know who to complain to? <p><u>Ask Staff:</u></p> <ul style="list-style-type: none"> - What arrangements are made for residents to vote? - How do you handle it if someone needs a lawyer or other service that you don't provide? 	<p>Review resident council documentation, as available, to determine level of activity.</p> <p>Review social work or progress notes for legal referrals.</p> <p>Is there documentation in progress notes or elsewhere, of resident complaints and disposition of complaints?</p>	<p>Compliance determinations will be made based primarily on resident/staff interviews and the correlation of interview information with documentation in the Medical record.</p> <p>If residents ask, they should be allowed to speak to the surveyor without facility personnel being present. However the resident has the right to have a third party of their choosing present during an interview.</p>	Social Services 405.1130 442.344

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
E. Financial Affairs F72-78 SNF 405.1121(k)(6) 405.1121(m) ICF 442.311(e) 442.320		Ask Residents: - Are you able to take care of your own financial affairs? - Does the facility keep some money for you that you can have when you request it? - When you ask for this money, how quickly do you get it? - Do you know the amount of money you have available at this time? - If the facility pays bills for you do they periodically provide an itemized listing of the transactions they have made? - When did you receive the last itemized statement? - Are you comfortable that your funds are taken care of correctly? - If you deposit money or valuables with the facility, do you receive a receipt for this deposit? - Are you or your family able to review your financial records when you request to do so? - Have you ever had money or anything else stolen? If so, what was done about it?	A copy of the statement should be in the residents financial record and given to the resident at least quarterly. Receipts, account logs showing deposits/withdrawals, authorization/reasons for withdrawals, and interest earned should be reviewed. If resident indicates there may be a problem, an in-depth interview should be conducted. Resident records indicate separate financial records from facility records.	Residents should have reasonable access to their funds (may not be available at 2 A.M.) and should have at least a quarterly accounting of their funds. If questions arise they should be resolved. Personal possessions and funds received from the residents should be protected from theft and other loss. If losses do occur there should be: 1. a procedure which is implemented to investigate the loss, and 2. a plan to prevent recurrence. Resident funds must not be appropriated for facility furnishings, linen direct care supplies, etc	Social Services 405.1130(a)

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F72-78 (cont'd)		<ul style="list-style-type: none"> - Does the home provide safe-keeping for valuables? - Have they ever lost anything of yours? <p>Ask Staff:</p> <ul style="list-style-type: none"> - What is the procedure when residents lose personal belongings? - Valuables? - How are resident personal funds handled? - What is your procedure when a resident asks to get an accounting of their funds? <p>* The special needs of residents with Alzheimer's disease who "lose" personal possessions should be noted. Individuals in stages 2 and 3 of Alzheimer's disease sometimes believe their personal possessions were stolen.</p>			

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F. Freedom From Abuse and Restraints F79-83 SHF 405.1121(k)(7) ICF 442.311(f)	<ul style="list-style-type: none"> - How many residents are physically restrained? - What type or restraints are used? - Are they applied correctly? - What is the apparent physical/mental condition of those residents restrained? - Do you observe the release of restraints every 2 hours and the provision of at least 10 minutes exercise for the resident? - Do staff respond to request for water, assistance to bathroom, etc., from a resident who is restrained? What is the interval between request and response? 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Why are you wearing this? - How often is this worn? - Do you know what would happen if it were removed? - How often is it removed? - What is done for you when the restraint is removed? - For nonrestrained resident-- + Have you ever been restrained? + For what reason? + What explanation was given for the restraint? - Do you ever feel that you receive medication when you don't need it? 	<p>Look for a physician's order for the restraint.</p> <p>Review nurses', physicians', progress notes re: reason for restraints and resident reaction to them.</p> <p>Also any alternative methods tried.</p> <p>What time of day are restraints most often applied?</p> <p>Review schedule of releasing restraints.</p> <p>Care plans:</p> <ul style="list-style-type: none"> - When restraint is to be used. - For how long. - What are plans for alternative measures. - Is the resident periodically re-evaluated? <p>If appropriate are the Social Service or activities departments involved in providing different directions for resident attention?</p>	<p>There must be a physician's order for all restraints, including "safety devices" which are defined in some State laws.</p> <p>Progress notes should show evidence that methods other than restraints were initially used to protect the resident from injury, and that restraints were used only when other methods were not adequate.</p> <p>If used in an "emergency" the reason for use must be documented and show that:</p> <ol style="list-style-type: none"> Its use was necessary to protect the resident from injury. Its use was necessary to protect others from injury. <p>The resident must be observed by a staff member at least every 30 mins. while restrained.</p> <p>The restraints must be released and the resident exercised, toileted, etc. at least every 2 hours.</p>	<p>Nursing Services 405.1124(c)(5)</p> <p>Rehab Nursing 405.1124(e)</p> <p>Patient Care Management 405.1124(d)</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F79-83 (cont'd)	<ul style="list-style-type: none"> - How often are restrained residents observed by staff? - Observe effect on residents. Do you see what may be signs of over-medication? - How often is this observed? - Residents should be free from mental and physical abuse. - Observe interaction of staff and residents for any sign of harassment, humiliation or threats. - Do residents appear comfortable with staff? - Look for numbers of residents with bruises or other injuries (skin of the elderly bruises easily, so do not automatically assume abuse or injury). - Observe resident to resident interactions and staff response to any physical or mental abuse of one resident to another. 	<p>Ask Staff:</p> <ul style="list-style-type: none"> - What is the facility policy regarding restraints? - What is considered an "emergency" need for restraints? - What is the most common reason for use of restraints? - Do you try any alternative measures before using restraints? - What information do you give the physician to help him make the decision to order restraints? - What do you routinely do for the resident when you periodically release the restraints? - Does use of restraints increase on evenings or nights when there are fewer staff members? - Have you had any accidents or incidents in the last year while residents were restrained? - How do you define the difference between a "safety device" and a "restraint"? - How do your policies differ in regard to "safety devices" and restraints? 	<p>Who authorizes the use of restraints in an emergency?</p> <p>Do progress notes indicate that a professional staff member authorized the use of "emergency" restraints?</p> <p>There should be documentation that the use of "emergency" restraint has been promptly reported to the residents physician.</p> <p>Review incident and accident reports to identify any problematic trends.</p> <p>Does the drug regimen review indicate appropriate use of psychoactive drugs?</p> <p>Are there resident complaints documented?</p> <p>What is the resolution of these complaints?</p>	<p>The restraint must be applied correctly.</p> <p>If the use of restraints increased during evening and night hours review progress notes, nurses notes and staffing to make a determination as to whether the restraints are justified or if they are for staff convenience.</p> <p>Care plans should plan not only for care while the resident is restrained but should show effort to find alternative treatments to restraints, or there should be documentation in the medical record that no alternative is appropriate.</p> <p>An appropriate drug regimen reviews should be conducted on the resident.</p> <p>Your observations should show interaction between residents and staff to be, except in unusual situations, free from tension and hostility.</p> <p>Staff should step into situation where one resident may be abusing another.</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F79-83 (cont'd)	<ul style="list-style-type: none"> - Observe for evidence of resident neglect, residents left in urine/feces without cleaning. 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Do you feel safe in the facility? - Do you ever feel intimidated, harassed, or otherwise abused? - How are confused residents treated? - Is anyone ever hit or treated roughly? - Do you feel as if you are treated with respect/dignity? - Is the staff/administration responsive to complaints? - Do you know who to complain to? 		<p>Resident should feel free to voice complaints. If no complaints are noted in records or on record review, why not?</p> <p>Residents should seem comfortable in relating how they are treated?</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
G. Privacy F84-89 SNF 405.1121(k)(8) (9)(14) ICF 442.311(g)	<ul style="list-style-type: none"> - Observe interactions between staff and residents for indications of respect, consideration, dignity and individuality. - How do staff members enter a residents room or go behind a privacy curtain? - Are privacy curtains used or doors shut when personal care needs and/or treatments are rendered? - Are there areas for residents to be alone or meet in private with visitors? 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Do you feel that you are treated as a worthwhile, adult individual? - - When you are being cared for, are you comfortable? - What is the degree of privacy and respect you receive? - Do you feel comfortable that if the door to your room is closed staff will knock or otherwise make their presence known before entry? - Do you have a private place to make telephone calls? - - Can you see your record if/when you ask? - Has any information about your condition been given to someone outside of the facility without your permission? 	<p>Review progress notes for indications that staff see resident as an individual - i.e., resident eats breakfast in bed because he/she enjoys it.</p> <p>Signed consent for release of information.</p> <p>Do maintenance of and content of medical records indicate that confidentiality is practiced?</p>	<p>Observations and interviews will give you information to determine if residents are respected and treated as individuals.</p> <p>Is privacy available-- e.g., access to a private place to meet or make phone calls, ability to shut door when having visitors, etc.</p> <p>Medical records should not be left where unauthorized personnel can read them and there should be identification codes needed to access computerized records.</p> <p>Married residents should be sharing rooms if they desire to do so unless there are appropriate contradictions.</p>	<p>Medical Records 405.1132(b) 442.318(d)</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F84-89 (cont'd)	<ul style="list-style-type: none"> - Are medical records kept in their assigned spots not carelessly left for nonauthorized persons to view? - Are married residents sharing rooms? - Observe for negative attitudes toward aging, infantilization and patronizing of residents. - If residents undress in public area, how does staff handle this? - Listen to staff conversation in public places (elevator, lobby). Are resident issues being discussed? 	<p><u>For Married Residents:</u></p> <ul style="list-style-type: none"> - When your husband/wife visits can you shut your door and be assured of privacy? - Can you ask that you not be disturbed and have that request respected? <p><u>Ask Staff:</u></p> <ul style="list-style-type: none"> - What is done to assure that each resident maintains his/her dignity and individuality? - How are medical records kept secure? Who has access? - Do you have married couples here? - Do they share rooms? - If not, why? - What arrangements do you make for spouses or significant others to visit? - Do you allow their door to be closed? - Can you adhere to a request that they not be disturbed? - How are residents' medical records and conditions kept confidential? 			

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
H. Work F90 SNF 405.1121(k)(10) ICF 442.311(h)	<ul style="list-style-type: none"> - Are residents doing any type of work such as picking up dirty trays, pushing laundry hampers, etc.? - What about clerical work? 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Are you ever asked to help out in the facility such as pick up dirty trays or stamp mail? - If yes, do you do this? - Do you want to, or do you feel it is expected of you? - Do you feel you can say "no"? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Are residents asked to help with facility staff if you are shorthanded? - What is their reaction? - What useful work is available for residents who want/need to be usefully "employed"? 	<p>If residents are performing services for the facility, is that included in their care plan with specific therapeutic goals defined?</p> <p>If appropriate does the family concur?</p> <p>Are results documented in progress notes?</p> <p>What service (activities, nursing, etc.) is responsible for planning reevaluating and adjusting work activity?</p> <p>Look for physician's orders for approval or disapproval of work activity or restrictions on this activity. Look for evidence that the resident is given opportunities to refuse to do the work. The resident, however, is not restricted from doing the amount and type of work they desire unless it is in conflict with the plan of care.</p>	<p>Services performed by a resident should be part of the resident's plan of care and should be done only if the resident is in full agreement.</p> <p>Service rewards are specifically identified and not obtained using the residents own funds.</p>	405.1124(d) 442.341

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
I. Freedom of Association and Correspondence F91-92 SNF 405.1121(k)(11) (12) ICF 442.311(i)	<ul style="list-style-type: none"> - Are there areas in the facility—e.g., small lounges, etc., where residents can and do meet privately? - Is mail delivered opened or unopened? - Are facility personnel assisting residents, if needed, in opening and/or reading mail? 	<p>Ask Residents:</p> <ul style="list-style-type: none"> - Can you have visits from anyone? - Can you find a private place to visit? - Do you receive your mail unopened unless you request otherwise? - Are there telephones you have access to? - Does the staff or volunteers assist you in reading or sending mail, if needed? - How timely is your mail delivered? - How do you receive incoming calls? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Where do residents go when they want privacy? - What telephones are available to residents? - What is the facility visiting policy? 	<p>Physician orders and care plans for indications of restrictions on visitors and/or receiving and sending mail.</p>	<p>All residents may have access to and maintain contact with the community and members of that community have access to them.</p> <p>Subject to reasonable scheduling restrictions, residents may receive visits from anyone they wish. A particular visitor may be restricted by the facility for one of the following reasons:</p> <ul style="list-style-type: none"> - The resident refuses to see the visitor. - The resident's physician documents specific reasons why such a visitor would be harmful to the resident's health. - The visitor's behavior is unreasonably disruptive of the functioning of the facility (reasons are documented and kept on file). <p>Decisions to restrict a visitor are reviewed and reevaluated each time the resident's plan of care and medical orders are reviewed by the physician and nursing staff or at the resident's request.</p>	Resident Rights 405.1121(k)(8) 442.311(g)

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F91-92 (cont'd)	Do the available telephones accommodate the physically handicapped (e.g., wheelchair bound, hearing impaired, etc.).			<p>Space is provided for residents to receive visitors in reasonable comfort and privacy.</p> <p>Telephones, consistent with ANSI standards (45.1134(c)), are made available and accessible for residents to make and receive calls with privacy. Residents who need help are assisted in using the phone. The fact that telephone communication is possible, as well as any restrictions, is made known to residents.</p> <p>Arrangements are made to provide assistance to residents who require help in reading or sending mail.</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
J. Activities F93 SNF 405.1121(k)(12) ICF 442.311(j)	<ul style="list-style-type: none"> - What planned activities are occurring? - What unplanned activities are occurring—individual, 2 or 3 persons or a larger group. - If there is a facility chapel, is it open? - Are activities posted at wheelchair level and kept up to date? - Are residents lined up in front of a I.V. in a common room for hours? - Are activities offered during the evening and on weekends. 	<p>Ask Residents:</p> <ul style="list-style-type: none"> - What do you like to do? - What did you do yesterday? (compare answers) - Is participation in activities optional? - Are you encouraged to participate? - Is pressure exerted on you to attend specific activities? - Which ones? (Surveyors should be aware of special encouragement—"gentle persuasion", which might be important for the depressed or withdrawn resident.) - Are residents notified of community activities? - Are arrangements made for transportation, etc. so that residents can participate? - Can residents go to religious services if they wish? - What opportunities are you given to make choices in your life within the facility? (eg. are all residents "put to bed" at the same time?). <p>Ask Staff:</p> <ul style="list-style-type: none"> - Are arrangements ever made to take residents to community activities? - Do friends and relatives ever take them to community activities? - Do your residents attend religious service of their choice? - How are residents kept informed/notified of activities? 	<p>Care plans or other documentation should indicate resident preferences for both facility and non-facility planned activities.</p> <p>Progress notes of responses to activities.</p>	<p>Compliance with this element is determined by evidence that residents are given the opportunity to participate in available activities they choose unless medically contraindicated.</p> <p>Residents must not be forced to participate against their wishes.</p>	<p>Patient Activities 405.1131(b) 442.345(a)(c)</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
K. Personal Possessions F94 SNF 405.1121(k)(13) ICF 442.311(k)	<ul style="list-style-type: none"> - Are residents wearing their own clothing or facility nightgowns, robes, etc.? - In resident rooms observe for personal belongings. - Ask residents if you can look in the closet—is personal clothing in there? - Ask residents if belongings such as clothing are identified with name tags or other identifying methods? - Is there enough space to store clothing? 	<p><u>Ask Residents:</u></p> <ul style="list-style-type: none"> - What clothing and personal belongings can you have? - Is there a place that you can secure any valuables that you may not want to keep in your room? <p><u>Ask Staff:</u></p> <ul style="list-style-type: none"> - What personal belongings may residents have? - What do you do to secure valuables and other personal property? - What provisions are made for the care of personal clothing? 	<p>Admission notes on personal property inventory (e.g., the record should indicate a list of any personal property secured by the facility).</p> <p>The record should indicate how personal clothing will be laundered.</p>	<p>Residents are permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility and such personal property is kept in a safe location which is convenient to the resident. The amount that is reasonable will be dependent on space available in the facility.</p> <p>Patients are advised, prior to or at admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items (e.g., cleaning and laundry).</p> <p>Any personal clothing or possessions retained by the facility for the patient during his stay is identified.</p> <p>The facility is responsible for secure storage of such items, and they are returned to the patient promptly upon request or upon discharge from the facility.</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
L. Delegation of Rights and Responsibilities F95-97 SNF 405.1121(k) ICF 442.312		<p>Ask Administrative Staff:</p> <ul style="list-style-type: none"> - When do you have relatives make decisions for residents-i.e., how do you decide when the resident isn't capable of making decisions himself? - Have any legal steps been taken? <p>Ask Resident and/or Guardian:</p> <ul style="list-style-type: none"> - Do you feel that you are given all pertinent information? - What opportunities do you have to make decisions regarding clothing, meals, bathing schedules, etc.? - For guardian: are you notified/informed in a timely manner as appropriate? 	<p>Review physician progress notes--incapability must be documented.</p> <p>Is there clear documentation as to whom rights and responsibilities have been assigned?</p> <p>Are pertinent consents/documents signed by appointed guardian?</p>	<p>The fact that a resident has been judged incompetent, is medically incapable of understanding, or exhibits a communication barrier does not absolve the facility from advising the resident of their rights to the extent the patient is able to understand them. If the resident is incapable of understanding their rights, the facility advises the guardian or sponsor and acquires a statement indicating an understanding of resident's rights.</p> <p>The surveyor reviews records of residents selected for in-depth review who are classified either incompetent, medically incapable of understanding their rights, or have a communication barrier to verify documented evidence (signed acknowledgment) that the guardian or other sponsor has been advised of these resident rights and understand their role in acting on behalf of the resident.</p>	Resident Rights 405.1121(k)(1) 442.311(a)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
STAFF DEVELOPMENT					
F98 SNF 405.1121		<p>Ask Residents</p> <ul style="list-style-type: none"> - Does staff know how to take care of you? - What things do they do to help you accommodate your (poor vision, unsteady walking, arthritis, etc.)? <p>Ask Staff</p> <ul style="list-style-type: none"> - What, if any, training have you had here to learn about unique problems and needs of the aged? - What training have you had during the last 12 months? - How have you learned about facility policies and procedures? - Does the facility ask your needs when they develop a training program? - In what areas would you like to have training? 	<p>Care plans reflect staff's knowledge of the problems and needs of the residents and special adaptations that are needed.</p> <p>Progress notes indicate that the special needs are considered in implementing planned care.</p>	<p>Facility staff adjusts care to needs/problems of resident.</p> <p>Staff is knowledgeable concerning facility policies and procedures.</p> <p>Staff practices correct techniques, i.e., infection control rehabilitation nursing techniques, etc.</p> <p>Staff interacts and treats residents in a kind, caring way.</p>	<p>Residents Rights SNF 405.1121(k) ICF 442.311</p> <p>Infection Control 405.1135(a)(b)(c)(d)(e) 442.327(b)</p> <p>Physical Environment 405.1134(a) 442.315(b)(c) 442.326(a)(c)</p> <p>Nursing Services 405.1124(a)(c)(e) 442.338(a)(2)</p> <p>Social Services 405.1130(a)</p>
F99 ICF 442.314					
F100	<p>How do staff relate to residents?</p> <p>Does the facility reflect adaptations for the elderly, i.e., information given in large print, floors covered with materials that allow for ease of movement with walkers, wheel chairs, etc.?</p> <p>Is resident care given using accepted professional standards?</p> <p>Is privacy maintained during bathing treatment, toileting?</p> <p>Are housekeeping staff courteous and responsive to resident needs?</p>				
F101	<p>1. Facility staff are knowledgeable about the problems and needs of the aged, ill, and disabled.</p> <p>2. Facility staff practices proper techniques in providing care to the aged, ill and diseased.</p>				
F102	<p>3. Facility staff practice proper technique for prevention and control of infection, fire prevention</p>				

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F102 (cont'd) and safety, accident pre- vention, con- fidentiality of resident information, and preserva- tion of resi- dent dignity including pro- tection of privacy and personal and property rights.</p> <p>INTENT</p> <p>To assure that facility provides ongoing training to staff so that they will be know- ledgeable in cur- rent practices, use proper tech- niques, and inter- act with residents in a kind, caring way.</p>					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>Status Change Notifications</p> <p>F103-104 SNF 405.1121(j) ICF 442.307</p> <p>F105</p> <p>1. The facility notifies the resident's attending physician and other responsible persons in the event of an accident involving the resident, or other significant change in the resident's physical, mental, or emotional status, or patient charges, billings, and related administrative matters.</p>	<p>Note residents condition:</p> <ul style="list-style-type: none"> - Clean - Well groomed - Well adjusted - Casts - Bruises - Decubitus Ulcer - Multiple sites of edema - Aberrant behavior, e.g., abusive, disruptive, not reasonable, etc. 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Have you been injured since you have been in the facility? - If you are injured or become ill, is your physician called? - Are your relatives notified? - Do you know who is notified if administrative changes such as changes in charges, billings, etc. occur? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Who do you notify if a resident is injured or has a change in condition? - When would they be notified? Does the facility have a policy regarding how soon a relative or responsible party would be notified? - Do you notify them of actual changes in resident condition and also if resident's condition is getting progressively worse? 	<ul style="list-style-type: none"> - Progress note should document injury/change in condition plus notification of physician and appropriate family member/guardian. - Changes in charges should be documented. Ask facility where this is located. - Review accident and incident reports for indepth sample. 	<ul style="list-style-type: none"> - All injuries and changes in condition must be documented. The resident's physician and family must be notified of significant changes. This should be documented, but this notification should be confirmed by the resident if possible. 	<p>Resident Supervision by Physician 405.1123(b)(3)</p> <p>Emergency Services 405.1123(c)</p>

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<p>F106</p> <p>2. Except in a medical emergency, a resident is not transferred or discharged, nor is treatment altered radically, without consultation with the resident or, if the resident is incompetent, without prior notification of next of kin or sponsor.</p> <p><u>INTENT</u></p> <p>To assure that:</p> <ul style="list-style-type: none"> - the resident receives proper treatment in the event of an accident or change of condition. - resident and/or next of kin or responsible party is aware in advance of any changes. - resident is not discharged to gain a higher source payment for that bed or facility convenience. 		<p>Ask Resident:</p> <ul style="list-style-type: none"> - Have you ever been or do you know if others have been transferred or discharged without discussing it with you first? 	<ul style="list-style-type: none"> - Nursing, physician and social work progress notes should be reviewed for evidence of discussion of transfer/discharge with resident or other designated person. 	<ul style="list-style-type: none"> - Except in an emergency, all transfers or discharges are first discussed with the resident or next of kin as evidenced by documentation in the medical record or confirmed by asking resident. 	

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Physician's Services F107 SNF 405.1123 A. Medical Findings and Orders at Time of Admission F108 SNF 405.1123(a) F109 1. There is made available to the facility prior to or at the time of admission, resident information which includes current medical findings, diagnoses, and orders from a physician for immediate care of the resident. F110 2. Information about the rehabilitation potential of		Ask Staff: - Interview nursing staff to determine if they receive transfer information and admission orders on day of admission. - Ask Administrator and Director of Nursing to explain procedure if a resident arrives without sufficient medical information and/or orders.	Review records of residents selected for indepth review to ascertain that: - There is a referral form from the transferring facility that was received in advance of admission or on date of admission that includes current medical findings, diagnosis and orders from a physician for the immediate care of the residents. - If the medical orders were not obtained from the residents attending physician, there are temporary orders from the emergency care physician. - Information on the rehabilitation potential (prognosis) of the resident and a summary of the course of treatment followed in the transferring facility were transmitted within 48 hours of admission. - The summary of treatment should include discharge summaries from therapies or special services when appropriate. - For residents admitted directly from the	Examine medical records of the residents selected for indepth review to determine if date of orders, medical data and other required information is the date of admission or within 48 hours of admission. The facility should receive sufficient information and orders to provide continuity of care of all residents.	

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F110 (cont'd) the resident and a summary of prior treat- ments are made available to the facility at the time of admission, or within 48 hours thereafter.			community, the attending physician provided cur- rent medical findings, diagnosis, prognosis, and orders. - The order should cover: + Medications and treat- ments + Diet + Therapies (P.T., O.T., Speech) + Activities (bedrest, ambulatory, able to participate with any specific limitations on activity).		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Resident Supervision by Physician F111 SNF 405.1123(b) F112 ICF 442.346 B. Resident Supervision by Physician F113 1. Every resident must be under the supervision of a physician F114 2. A physician prescribes a planned regimen of care based on a medical evaluation of each resident's immediate and long-term care needs.	Observe resident for any problem/conditions that should be addressed by physician, e.g., edema, loss of appetite, weight loss, etc.	Ask Resident: - How often physician visits. - If physician has discussed plan of care and medical treatment. - If resident feels treatment and/or plan of care meets his/her needs. - What kinds of questions do you ask the physician about your health problems? (Cite examples). Ask Licensed Nursing Staff: - How often physician visits and is it often enough to meet resident's need? - Does physician participate in evaluation and reevaluation of resident's plan of care? - Does plan of care meet resident's needs? - Is physician available in an emergency? - Is physician available to discuss residents treatment and care? Ask Administrator: - Facility's policy regarding a physician to provide care in the absence of the resident's own physician. - Facility's policy on physician visits.	Review medical records of selected for indepth review for: - A current plan of care that is based upon physician's orders and resident's needs. - Evidence that the plan is reviewed and revised as needed. - Evidence through physician's progress notes, nurses notes, physician's orders, that the physician participates in the resident's overall plan of care. - Evidence that rehabilitation potential is addressed. - Long range plans include an estimate of the length of time for skilled nursing care and a discharge plan. - Physician's orders for medications and treatments on admission and during stay. - A medical evaluation completed within 48 hours of admission unless done within 5 days prior to admission that includes attention to needs such as diet, vision, hearing, speech	Medical records should provide evidence that the residents are under the supervision of a physician by the coordination of physician's orders and progress notes with the resident's plan of care and observations of residents needs. There is evidence that the physician reviews and revises the plan of care as needed. There is evidence that physician services are available to the residents when the residents need such services. An alternate schedule for physician visits may be established if the attending physician determines that the resident need not be seen every 30 days. Justification for the decision is placed in the resident's medical record and is reviewed by the U.R. Committee and State medical review team. Where there is a change in the resident's condition and the physician has failed to document his findings or evaluation of the condition, the physician has failed to provide	

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F114 (cont'd)					
F115 3. A physician is available to provide care in the absence of any resident's attending physician.			<ul style="list-style-type: none"> - Level of activity, emotional adjustment. - Evidence in care plans and treatment records that physician's orders are being implemented. - Discrepancies in medication record, diet order, intake and output records. - Evidence that an alternate physician provided care if applicable. - Progress notes by physician at least every 30 days for first 90 days (ICF-at least every 60 days). - Review of medications and treatments every 30 days or 60 days if an alternate schedule of visits has been approved. - Documentation of physician observations, actions and plans for treatment. - Justification for alternate schedule of visits. 	<p>evidence of his evaluation of resident needs and supervised care.</p> <p>A physician is available to respond within a reasonable time when a resident needs medical attention.</p>	
F116 4. Medical evaluation is done within 48 hours of admission unless done within 5 days prior to admissions, NOT ICFs.					
F117 5. Each SNF resident is seen by their attending physician at least once every 30 days for the first 90 days after admission.			<p>A few closed records should be reviewed to determine if residents were appropriately discharged by an order written by the attending physician. Also review</p>	<p>Although medical evaluation can be noted as a revision of the previous H&P</p> <p>A statement such as "no change" when in conflict with the status of the</p>	

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SURVEY AREA

OBSERVATION

INTERVIEWING

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F117 (cont'd)</p> <p>Exception: ICF residents must be seen every 60 days unless otherwise justified and documented by the attending physician.</p> <p>F118 6. Each resident's total program of care including medications and treatments is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days and revised as necessary.</p>			<p>discharge plans to assure that they were adequate and implemented.</p> <p>Verbal medication orders are countersigned by a physician.</p> <p>Physician is reviewing all medication orders every quarter.</p>	<p>resident on this admission to the facility, does not constitute a medical evaluation.</p> <p>Verbal medication orders must be countersigned with 48 hours.</p>	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>Exception: Only medications must be reviewed quarterly for ICF residents.</p> <p>F119 7. Progress notes are written and signed by the physician at the time of each visit, and all orders are signed by the physician.</p>					
<p>F120 8. Alternate physician visit schedules that exceed a 30-day schedule adopted after the 90th day following admission are justified by the attending physician in</p>					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F120 (cont'd)</p> <p>the medical record.</p> <p>These visits cannot exceed 60 days or apply to patients who require specialized rehabilitation schedules.</p> <p>Exception ICF residents must be seen every 60 days unless justified otherwise documented by the attending physician.</p> <p>C. Emergency Services</p> <p>F121 SNF 405.1123(c)</p> <p>F122 Emergency services from a physician are available and provided to each resident who requires emergency care</p>		<p>Ask Staff:</p> <ul style="list-style-type: none"> - Are you aware of physician reporting procedures and medical protocols to be followed during a fire emergency? - Do you know where names and telephone numbers are of physicians to be called in case of emergency? 	<ul style="list-style-type: none"> - If records document an accident or a medical emergency, was the patient seen by a physician or was the physician notified promptly of the emergency? - Review physician's orders to see if specific medications or treatments were ordered to treat emergency situation if applicable. 	<ul style="list-style-type: none"> - Surveyor verifies that there are readily available written procedures for securing a physician in case of emergency. - Names and telephone numbers are posted or on rolodex. - An alternate physician is designated. 	<p>Status Change Notification 405.1121(j)</p>

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F122 (cont'd) INTENT: To assure that a physician has overall responsibility for the management and supervision of the residents care.			- Review physicians progress notes to see if emergency situation was addressed.	- There is provision for: + Notification of attending physician/emergency and other responsible person. + Arrangements for transportation. + Preparation of reports. + There is evidence in the medical records that proper procedures have been carried out. + Residents with sudden changes in condition have been evaluated by the physician.	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Nursing Services F123 SNF 405.1124					
F124 SNF 405.1124(c) F125 F126 ICF 442.1124(c) A facility provides nursing services sufficient to meet nursing needs of all residents all hours of each day.	Basic care provided to residents: Surveyors should observe the basic care provided by staff to the residents. Listed below are suggested areas of attention which may provide evidence of the quality of personal care: - Eyes/Ears/Mouth + Presence/absence of: + Secretions forming around eyelids, redness or irritation of eyes. + Eyeglasses worn when appropriate are clean, in good repair and fit properly. + Backs of ears scaly, obvious wax build-up, discharge, odor. + Hearing aid worn when appropriate, is in good repair and working. + Dried food particles or drool, etc. around mouth.	Ask Resident: - If the resident's clothing is inappropriate, ask: + Did you choose your clothing today? + Is this what you want to wear? + Do you have other clothing available? - If the resident is not clean, poorly groomed, or inappropriately groomed, ask the resident: + Have you had any help in caring for yourself today (e.g., washing your face, brushing your teeth, etc.)? + How often do you have a bath/shower? + How often is your hair washed? + How often do you brush your teeth/clean your dentures? + Were there extenuating circumstances (e.g.,	Nursing notes, flow sheets or bathing records should indicate that the care plan for grooming and personal hygiene is being followed. For example: - Bathing schedules are being followed (including the use of any soaps or special lotions). - Assistance instruction and/or supervision is being provided as identified for each activity. Nursing documentation should also indicate resident response or any changes in the resident's behavior, reaction to an activity, or the ability to carry out grooming and personal hygiene activities. Look for indications of progress toward a goal or further deterioration of resident functioning.	Refer to information on observation. A pattern of evidence of poor personal care indicates non-compliance unless the care plan specifically deals with this and implementation is occurring. The regulations require that individual preferences are taken into account when providing for grooming and personal hygiene and that residents are encouraged in self-care activity. Do your patient interviews substantiate compliance with the regulations?	Resident Rights 405.1121(k)(8)(13) 442.311 (g)(k) Social Services 405.1130(a) 442.344 Activities 405.1131 442.345(a)(c) Patient Care Management 405.1124(d) 442.341 Training 405.1121(h) 442.314
F127 Grooming and Personal Hygiene SNF 405.1124(c)					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F127 (cont'd)	<ul style="list-style-type: none"> + Dentures worn when appropriate and in good repair. + Oral hygiene. - Odors + presence/absence of: <ul style="list-style-type: none"> + Body odors - Hair/Scalp <ul style="list-style-type: none"> + Clean and free of rashes + Hair combed - Nails are clean and appropriate length - Clothing is appropriate, clean, and in good repair. + Extremities elevated as necessary while in chair or wheelchair. + Appropriate techniques to prevent infection. + Use of whirlpool as a treatment modality as available and appropriate. - With resident's permission check: <ul style="list-style-type: none"> + heels, feet and toes + lateral hip + scapular area + sacrum + buttocks + bony prominences in contact with braces + condition of stump (especially diabetic 	<p>resident is participating in dressing retraining program)?</p> <ul style="list-style-type: none"> - Special consideration might be given to the demented patient who frequently "borrows" clothes and for whom removal may elicit catastrophic reaction—whether clothing "matches" may not be the most important issue in the care of these patients. <p>Ask Direct Care Staff:</p> <ul style="list-style-type: none"> - How do you choose what clothing each of your residents wear each day? - Do you have a specific schedule for washing residents' hair? - How did you learn to bathe resident? - How did you learn to wash residents hair? - How did you learn to shave residents? - How do you handle situations when residents want to wear dirty clothes, or mismatched clothes? - How much care do you let the residents do on their own? 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F127 (cont'd)	amputees with elastic bandage or sock removed).				
Skin Condition F128-129 SNF 405.1124(c)	<p>Observe with residents' permission:</p> <ul style="list-style-type: none"> - General condition of skin + Redness + Blanching + Soft/dry/rough etc. + Rashes/irritation + Bruises + Scabs + Free of above - Measures taken to prevent skin breakdown. - Pressure sores - Pressure sores Rx - Factors contributing to prevention of pressure sores + Overall cleanliness and maintenance of dry and aerated skin (uncompromised by urine/feces/perspiration) + Padding for pressure points and bony prominences including padding on bed/chair + Proper gentle massage to bony areas several times a day. 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Are your feet usually swollen? - Do you know what causes the swelling? - What do you do to alleviate it? - Is this discoloration normal for you? - How did this wound/bruise develop? - Are the treatments done about the same time every day? - What staff person has looked at your skin recently? 	<ul style="list-style-type: none"> - Look at nursing notes and P.O.C. for evidence of: <ul style="list-style-type: none"> - Planned preventive measures - Treatments/Intervention including nutrition - Routine assessment/evaluation of skin condition - Documentation of specific skin problems with location number, severity, measurements as appropriate, and cause - Progress or lack of progress in healing - Assessment/Reevaluation of interventions with alterations in plan - Appropriate nutritional plan - Methods to control edema of lower extremities 	<p>Preventable pressure sores are not occurring. Ulcers present are treated on a routine basis according to P.O.C. Is skin clean? Is resident dry? Is turning schedule adhered to? Are linens clean and smooth? Do personnel know preventive measures and practice these? Has a nutritional assessment been done, and if appropriate, recommendations implemented?</p>	<p>Dietetic Services 405.1125(i)(c)(e) 442.332(a)(1)(b)(1)</p> <p>Activities 405.1131(b) 442.345(a)</p> <p>Patient Care Management 405.1124(d) 442.341</p> <p>Training 405.1121(h) 442.314</p> <p>Rehabilitative Nursing 405.1124(e) 442.342</p> <p>Supervision of Patient Nutrition 405.1124(f) 442.332(b)(2)</p>

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F128-129 (cont'd)	<ul style="list-style-type: none"> + Regular assistance for resident to turn or shift weight (bed-rails, footboards, trapeze). + Bed linens, clothing, underpads smooth and free from wrinkles. + Elastic bandages or hose are smooth and wrinkle free. + Elastic bandages wrapped smooth with appropriate overlap. + Dietary/nutritional support for skin integrity. (See Guidelines for Dietary/Nutrition) + Prevention of shearing force when resident's position altered by staff. + Turning and repositioning as needed. - Care and Treatment: <ul style="list-style-type: none"> + Turning and repositioning every two hours or as needed (e.g., alternative approach that is justified by the facility.) + Positioning of the ulcer site or protection of affected areas. + Use of effective pressure relief devices. 	<p>Ask Direct Care Staff:</p> <ul style="list-style-type: none"> - What can you tell me about Mr./Mrs. swollen feet/wounds/bruises/etc.? - What do you do for them? <p>Ask Charge Nurse:</p> <ul style="list-style-type: none"> - How did _____ get cuts, bruises, etc.? - What is being done to prevent further occurrence? - What treatment is he/she receiving? 			Resident Super- vision by Physician 405.1123(b)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Wounds/Wound Dressings F126 SNF 405.1124(c)	<ul style="list-style-type: none"> - Condition of dressing - i.e., clean, firmly secured unless contraindicated. - Observe, if possible, and with resident's permission, a dressing change + Pre-dressing Removal + Equipment and supplies organized + Hands washed + Residents provided with privacy - Dressing <ul style="list-style-type: none"> Is: <ul style="list-style-type: none"> + Old dressing observed for drainage? + Wound examined + Appropriate technique used + Proper disposal of old dressing? + Post dressing + Does staff member wash hands? + Return resident to comfortable position or previous activity? 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - How often is the dressing changed? - By whom is the dressing changed? - Does it seem dressing changes are frequent enough? - Are there any odors from the dressing? - Is the dressing change always done in a similar way? - If not, what are the differences? - Do you feel confident that the wound is being well cared for? - Is the area/wound healing? - What caused the ulcer, wound, etc.? Is it healing? Does the staff keep you informed of its status? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Specific treatment and schedule for each resident? 	<ul style="list-style-type: none"> - Physician orders for wound care - Progress notes detailing condition of wound - i.e., size, drainage, surrounding tissue, odor - Treatment provided - Progress/change - Plan of Care (POC) + The plan of care should address: <ul style="list-style-type: none"> - Area in need of treatment, treatment to be performed, frequency, and responsible staff. - All necessary solutions, ointments, irrigations, types of dressings, and materials. - Any necessary precautions, drains, if present, sutures and tubing. - Specific goals of treatment as well as any problems or limitations imposed as a result of treatment. 	<p>Physician orders, your observations, progress notes and POC should reflect the same information.</p> <p>Treatment provided over a period of time with no improvement and no re-evaluation also would represent non-compliance, unless nursing/physician progress notes address the "no improvement" problem.</p> <p>Compliance is evidenced by:</p> <ul style="list-style-type: none"> - treatment given according to doctor's orders and POC. - use of appropriate technique when caring for wound/changing dressing (e.g. follows facility's written procedures). - periodic evaluation of healing process and revision of care plan as needed. 	<p>Physician Services 405.1123 442.346</p> <p>Infection Control 405.1135(b)</p> <p>Pt. Care Management 405.1124 442.341</p> <p>Dietetic Services 405.1125(b)(c)(e) 442.332(a)(1)(b)(1)</p> <p>Medical Records 405.1132 442.318</p>

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Restraints F130 When residents require restraints the application is ordered by the physician, applied properly, and released at least every two hours. (See also information under Resident rights—freedom from abuse & restraints)	Direct to evidence of: - Proper application - Proper use - Maintenance of good body alignment - Resident observation, release and exercise Observe frequently throughout your visit to validate care. Specific observations should include the following items: - Type of restraint: belts, wrist or ankle cuffs, blanket restraints, vests, bed nets, locked, etc. (When locked restraints are used can you readily find the key and/or scissors?) as well as geriatric chair or geri-table/tray in place for prolonged periods. - Protective devices and/or safety devices that are used as restraints must be evaluated as restraints. - Appropriate application: skin protected from injury (restraint neither too loose nor too tight to prevent	Use of restraints may be precipitated by an "emergency" situation in which there is a threat to the resident's health or safety, or a threat to the health and safety of others due to the resident's behavior. Restrained residents may not be coherent or rational enough to respond to questions and caution in interviewing therefore, must be exercised. However, observation of a resident in a geri-chair with table in place or a resident in a wheelchair (with vest restraint) for several hours would warrant appropriate questions as to when the staff last assisted him or her to move about or whether the resident would like to get out of the chair. Staff interviews focus on the reason why the resident is restrained. Ask Direct Care Staff and Charge Nurse: - When, why, and how to release and apply restraints? - Why is the resident	- Physician orders for restraint: reason, length of time, type - Progress notes - Describe the resident's status/behavior which prompted the use of the restraint. - If a chemical restraint, the order should indicate a specific time period for its use as well as a stop date. - Plan of Care should + Identify other methods or therapies that are being used in conjunction with restraints. + What alternatives to restraints have been considered. + Identify staff responsible for observing the resident (every 30 minutes), and releasing and exercising the resident (every 2 hours for at least 10 minutes). Time intervals should be identified. + Indicate involvement and input of other disciplines necessary to overcome the problem. + Indicate a specific period of time for	- Is there a physician's order, including the circumstances in which they will be used, the length of use, and the type of restraint? - Is the restraint applied properly? - Is it released at least every two hours and the resident provided with exercise and toilet facilities if needed? - Does the staff observe the resident frequently while he/she is restrained? - Are chemical restraints administered in accordance with physician's orders? - Is the order for restraints renewed only after a reassessment of the patient?	Patient Rights 405.1121(k)(1)(7) 442.311(f)(2)

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F130 (cont'd)	<ul style="list-style-type: none"> - rubbing and blistering or impeded circulation) - Body alignment and support: use of pillows, footboards, and wheelchair footrests to maintain appropriate posture, circulation, and to prevent skin injury or breakdown. - Periodic release and exercise: exercise may include ambulation, range of motion, massage, or other opportunities for motion (at least 10 minutes every 2 hours during day and evening hours). - Chemical restraints: residents appear drowsy throughout the day (may indicate tranquilizers or other drugs are being used to limit or control behavior for staff convenience). 	<ul style="list-style-type: none"> - restrained? - Has the resident given an option of restraint? - When were you taught the use of restraints? - By whom? - If chemically restrained (excessively sedated) <ul style="list-style-type: none"> + Why is this done? + Whether alternate means of restraint have been attempted, for how long this will continue, etc. This should elucidate from staff whether the chemical restraint is necessary, or whether it is done for staff convenience by controlling resident behavior - Do you ask the resident for permission before using restraints? - How does the restrained resident summon assistance? - What is the usual time-frame for assistance to reach the restrained resident? <p>Ask Resident:</p> <ul style="list-style-type: none"> + Why are you restrained? + What would happen if the restraint were removed? + When do you use bed rails? + What purpose do they serve? + How do you gain assistance? 	<p>using the restraint.</p> <ul style="list-style-type: none"> - Indication of assessment of factors which precipitate residents behavior which has warranted restraints and plans to intervene early enough to prevent occurrence. - Type, duration and frequency of exercise should be documented. - An assessment of why restraints are continued should be documented. 		

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Bowel and Bladder F131 SNF 405.1124(c) Each resident with incontinence is provided with care necessary to en- courage continence including frequent toileting and opportunities for rehabilitative training.	<ul style="list-style-type: none"> - There should be a chart/record in the resident's room on which the program is documented accurately. - If the room is located a distance from the toileting room or for residents with problems ambulating, a commode may be present in the room. - Verify that a call light is available to the resident if non-ambulatory or re-strained. - Are fluids available at bedside? - Is there roughage on meal tray? - Diet is appropriate to enhance elimination? 	<p>Both the resident and direct care staff should be interviewed and should exhibit a good understanding of the importance of maintaining a regular schedule of elimination. If neither are aware of the intake and toileting schedule, then determine whether they are appropriately planning the resident or carrying out a retraining program.</p> <ul style="list-style-type: none"> - Verify that the resident is aware that he/she is on a retraining program and knows the content of the program. <p>Ask Resident: Suggested questions are:</p> <ul style="list-style-type: none"> - How do you deal with constipation/diarrhea? - Are you involved in a special bowel/bladder training program? - If so, how does your program work? - Any problems with it? - Any successes to date? - What does the staff do for you in this matter? - Are they consistent and timely? - How long do you have to wait to be taken to the toilet? 	<ul style="list-style-type: none"> - Physician orders if required by facility policy - Nursing notes for + Assessment + Documentation of techniques and progress, reevaluation - Plan of care - The plan of care should clearly address: + Goals that resident will aim for. + Methods to accomplish the goals. + Schedule for fluid intake. + Schedule for toileting. + Responsible staff + Any limitations the resident may encounter as a result of either incontinence or the training program. - Progress notes/physician orders for cause of incontinence. - Laboratory tests of kidney function when available - Treatment for diarrhea/constipation - Residents preference for treatment of constipation. - Recently admitted and newly incontinent residents should be thoroughly assessed for at 	<ul style="list-style-type: none"> - Are all incontinent patients assessed for cause of incontinence and ability to be helped by a bowel/bladder rehabilitative training program or an incontinence management program? - Are all appropriate residents involved in bladder/bowel training programs or, incontinence management and there is a schedule that shows when the program will be started? - Is there evidence of follow through on all shifts? - For residents not on bowel/bladder retraining programs the plan of care should address specific measures for managing incontinence with a view to prevention of skin and other problems and maintenance of resident dignity. 	<p>Nursing Services 405.1124(e)</p> <p>Dietetic Services 405.1125(c)</p>

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F131 (cont'd)	<ul style="list-style-type: none"> - When a resident puts on his/her call bell for toileting assistance, how long is it before assistance is given? - Observe pre-meal toileting. - Privacy provided. - Schedule for toileting should allow for resident's normal sleep pattern, to avoid disrupted sleep. 	<p>Ask Nurses Aides and Charge Nurse:</p> <ul style="list-style-type: none"> + Will you describe this resident's bowel/bladder (B/B) training program? + How long has it been in effect? + When will you evaluate the results? + If this program is not successful - What assessment was done to determine B/B status - For residents not on B/B retraining programs what is the facility program for managing incontinence? 	<p>at least 7 days for the cause of incontinence and when appropriate an intensive bowel and bladder B/B training program should be instituted.</p> <ul style="list-style-type: none"> - A trial B/B training program is suggested for all residents with incontinence problems. - I & O 		
<p>Catheter Care F132 SNF 405.1124(c)</p> <p>Each resident with a urinary catheter receives proper routine care including periodic evaluation</p>	<p>The indwelling catheter should promote a continuous flow of urine unless ordered otherwise. The surveyor should also observe for the following:</p> <ul style="list-style-type: none"> - Ample supplies for catheter insertion and care. - Proper positioning of the tubing and drainage bag. - Cleanliness of the 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - What is the tubing/catheter for? - Why do you have one? - Does it cause any discomfort? - If it does, what is done about it? - How do you feel about having the catheter? - Is any special care given in relation to the catheter? 	<p>The surveyor should verify that there is a physician's order for an indwelling catheter, including the type and frequency of catheter care. If irrigation is ordered, the order should include type of solution and frequency of irrigation. The record should also indicate the color, consistency, and amount of urinary drainage.</p>	<p>*The facility should follow accepted professional standards in their catheter care.</p> <p>There should be medical reasons for catheter insertion - staff convenience cannot be justification.</p> <p>Direct care staff should know signs and symptoms of urinary tract</p>	<p>Infection Control 405.1135(b)</p>

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F132 (cont'd)	tubing and drainage bag. - Color and consistency of urine in bag. - Availability and accuracy of documentation on the I&O sheet if ordered or policy. - Proper equipment for ambulation - leg bag if resident is ambulating. (if ordered) - Availability of fluids. - When indicated monitor intake to ensure adequate intake and output or conformance with physician orders. - How many observed residents are on catheter care?	Ask Nursing Aide and Charge Nurse: - How do you routinely position and secure catheters and drainage bags? - How often is each part of the system changed? - What are the indications for insertion of the catheter? - What is the facility's procedure for routine catheter care? - How do you observe for U.I.'s in residents with indwelling catheters? - What is the facility's procedure for the cleansing and storage of reusable catheter equipment and drainage receptacles? - How do you care for catheter tubing?	- Assessment should address: + Need for an indwelling catheter. + Resultant problems or limitations. - Plan of Care should address: + Type of catheter and type and frequency of care. + For irrigation, the rationale, the type of solution, amount, and frequency of irrigation. + Frequency of symptoms which would precipitate catheter change. + Time frames of catheter change and responsible staff. + Appropriate increase in oral fluid intake. - Intervention The record must reflect: + When and by whom the catheter was inserted and for what reason. + Any special care provided + New problems or changes + Only appropriately trained staff should deliver catheter care. + Only licensed staff should insert	infections (U.T.I.s) and these should be reported and treated promptly. *The Center for Disease Control has developed standards for catheter care which may be used but it is not a requirement.	

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F132 (cont'd)			<ul style="list-style-type: none"> + Indwelling catheter. + The specific type and size of equipment used should be noted. + Signs and symptoms of urinary tract infections (UTI) should be acted upon and documented as to follow-up. - Evaluation/Reevaluation - The record should reflect that the resident: <ul style="list-style-type: none"> + Is assessed for UTI. + Has no abdominal distention. - Notes should also include: <ul style="list-style-type: none"> + The color and odor of urine and the development of any problems after insertion of indwelling catheter. + Verify that catheter is patent. 		

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Injections F133 SNF 1124(c)	<ul style="list-style-type: none"> - Observe for preparation of injection - i.e. maintenance of sterility; correct dilution, handwashing, before preparation, etc. - Observe injection site for: <ul style="list-style-type: none"> + Redness + Discoloration + Swelling + Lesions - Observe for proper technique when injection is given <ul style="list-style-type: none"> + correct site + correct needle size + correct volume of drug + sterility maintained - Resident is observed for any adverse reaction - What is the disposal method for used needles or syringes? 	<p>Ask Nurse:</p> <ul style="list-style-type: none"> - What is your plan for alternating injection sites? Show me. - What is the medication for and what are potential adverse reactions? - Is there nonspecific pain at the injection site or shooting pains down a limb? - Is there skin irritations or lumps under the skin? - If adverse reaction occur, how soon are they reported? - Could this be given by any other route? <p>Ask Resident:</p> <p>Suggested questions are:</p> <ol style="list-style-type: none"> 1. What kind of medicine do you receive by injection/shot? Why do you need that medicine? 2. Do you have pain or numbness at or around your injection site? 3. Who gives the injection? 4. Do you receive your injection according to a schedule? 	<ul style="list-style-type: none"> - Physician order sheet - Nursing notes for: <ul style="list-style-type: none"> + Resident response to medication if appropriate + Any problems noted at injection site + Any other adverse reactions - Site of injection - Plan of care - Rotation of injection site - Care for any special problems related to the injection. - Infection Control: reports for any infections connected with injections. 	<ul style="list-style-type: none"> - Is the medication administered according to the physicians order? - Is proper technique used in preparation and administration including site rotation? - Does the nurse administering the medication know the expected action of the drug? - If infection control reports show infections at injection sites. - Is the resident's response to the medication noted in the progress notes? 	<p>Staff Development 405.1121(h) 442.314</p> <p>Infection Control 405.1135(b)</p>

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Parenteral Fluids F133 SNF 405.1124(c)	<p>The surveyor should observe that parenteral fluids are administered with safe, aseptic technique providing fluids as ordered by the physician. Safety and comfort measures are to be taken insuring maximum protection and optimum hydration of the resident.</p> <p>The surveyor should note the following items:</p> <ul style="list-style-type: none"> - Labeling of the solution bottle/bag, rate of infusion/cc/ml per hour. - Date and time started--additives, if any. - Any signs of swelling or redness at site. - Site dressing is clean, dry and dated. - Accurate I&O of parenteral and P.O. fluids - If splint (armboard) is used, it is applied to prevent movement but not impede circulation. - Positioning of I.V. tubing. - Comfort of restraint used to allow for maximum resident freedom while preventing movement of I.V. site. 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Why do you have this tube in your (arm)(leg)? - Is it comfortable? - Is there a way it would be more comfortable? - How long has it been in? - How much longer will it stay in? <p>Ask Appropriate Staff:</p> <ul style="list-style-type: none"> - Why the resident is receiving I.V. therapy? - What the drip rate is (the amount of fluid to be received per hour). - How often the dressing is changed. - How often the tubing is changed. - What are possible side effects? - How often is the site changed? - How often is the infusion checked for drip rate and the remaining volume to be administered? <p>Ask Nursing Aide</p> <ul style="list-style-type: none"> - What are your responsibilities when caring for a resident receiving IV fluids? - What training have you had? 	<ul style="list-style-type: none"> - Physician's order for parenteral therapy specifying type of fluid, rate of infusion/hour, and additives, if any, is available and current. - Twenty-four hour I&O record. - Nursing documentation indicates physician's orders are being followed. - Any adverse reactions are noted in the medical record. - Record indicates: <ul style="list-style-type: none"> + Infusion started by whom; cite time, rate of flow + Note is made of observation of pain or swelling at infusion site. + The need or reason for parenteral fluids. + Response to the therapy. + Problems and limitations encountered by the resident as a result of receiving parenteral fluids. - Plan of Care^a. The plan of care should include <ul style="list-style-type: none"> + type, rate of infusion/hour, and additives (if ordered). 	<ul style="list-style-type: none"> - Is the parenteral fluid administered according to the physician's order and in accordance with accepted nursing practice? - Are infiltrations noted in a timely manner before a large amount of fluid infiltrates? - Is the facility procedure for care of the IV site and tubing changes followed for all patients unless contraindicated? - Does documentation reflect what the patient received, any problems, and his/her response to the parenteral fluid? - Have any adverse effects been caused by administration of IV fluid? - If yes, were these preventable? 	Resident Care Policies 405.1121(i) Infection Control 405.1135(b) Patient Care Management 405.1124(d) 442.341

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F133 (cont'd)			<p>specified goals for correction, time frames, and responsible staff.</p> <ul style="list-style-type: none"> - Documentation must include time administered and by whom, the amount of fluid infused, and any other special care administered as a result of IV therapy (i.e., mouth care, assistance with ADLs, etc.). - The record must reflect: <ul style="list-style-type: none"> + Conditions of site and any infiltrations, phlebitis, necrosis, etc. noted, along with measures taken to correct these. + The resident's response to therapy + Changes in laboratory studies *Plan of care would not be modified for a one-time IV infusion. 		
Colostomy/Ileostomy F133 SNF 405.1124(c)	<p>The surveyor should ascertain that the facility is providing appropriate nursing care to those residents who have had bowel surgery resulting in a colostomy or ileostomy. It is recommended that the surveyor, with the resi-</p>	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Why was the ostomy performed? - How do you feel about the ostomy? - Does it ever cause you problems (e.i., pain, skin problems, odors, accidents)? If so, what 	<p>The surveyor should determine that:</p> <ul style="list-style-type: none"> - Colostomy irrigations, if ordered, are documented as performed by the resident or appropriately trained staff. - In the case of sigmoid colostomy regular patterns of bowel elimination are 	<p>Compliance would be indicated if residents are physically and emotionally comfortable with the ostomy with minimal or no skin problems. If residents are not comfortable with the ostomy, are having skin or other problems, the facility</p>	<p>Patient Care Management 405.1124(d)</p>

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Colostomy/Ileostomy F133 (cont'd)	<p>dents permission, observe care being given to determine that proper techniques are being used. The following steps should be taken to assure that proper ostomy care is being provided.</p> <ul style="list-style-type: none"> - The ostomy dressing should be changed or the bag emptied and thoroughly cleaned promptly after each bowel evacuation or more frequently, if drainage continues. - The peristomal skin should be cleansed and dried, and appropriate measures taken to prevent excoriation and infection. - The resident's privacy should be considered while providing care. - The resident should be provided with information and instruction in self-care at the appropriate level of understanding. - The resident should be observed for signs of withdrawal, disgust, anxiety, or other emotional responses which may be related to his/ 	<p>does staff do about it?</p> <ul style="list-style-type: none"> - What does the staff generally do with or for the ostomy? Are they consistent and timely? - Has staff talked to you about doing some of the care for this? If so, what was the outcome? If not, is this something you'd be interested in learning more about? <p>Ask Staff:</p> <ul style="list-style-type: none"> + If nurses aid: take care of colostomies? + How did you learn to do this? + What do you do if the skin around the colostomy becomes red or sore? + Do you ever teach the residents to care for their own colostomies? - If nurse (RN or LPN) <ul style="list-style-type: none"> + What is the procedure if the resident becomes constipated? <p>Ask Other Nursing Staff:</p> <ul style="list-style-type: none"> - Is there a facility procedure for ostomy care? - Do you have skin problems with your 	<p>documented as established through management of diet, fluid intake, exercise, and the use of prescribed laxatives, suppositories, and/or irrigations.</p> <ul style="list-style-type: none"> - Ostomy care is documented in the resident's record along with a description of the excreta. - Problems in irregularity, skin breakdown, or other observable concerns are documented and reported to the physician. - Documentation indicates that nursing measures are taken to assist the resident who is experiencing problems in understanding and/or accepting the presence of the ostomy. - Documentation of nursing measures to maintain skin integrity. - Assessment <ul style="list-style-type: none"> The assessment should indicate: <ul style="list-style-type: none"> + Needs, problems, and limitations as a result of an ostomy. + Specific degree of 	<p>should be responding to these and correcting them as reasonable. Care plans should indicate specific goals in relation to problems and specific interventions for reaching these goals.</p> <p>When available an enterostomal therapy nurse should be involved in developing the care plan for residents with urinary and intestinal stomas.</p>	

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Colostomy/Ileostomy F133 (cont'd)	her acceptance of the colostomy/ileostomy. - The surveyor should observe the staff giving ostomy care to verify that proper technique is used.	ostomy residents? - What do you do when skin becomes excoriated? - What teaching do you do with the residents? - What in general is the response to this teaching?	self-care performed or assistance needed. + Special skin care needs. + Special dietary needs. + Emotional support. + Medications and treat- ments if needed. - Plan of Care The plan of care should clearly address: + Specific goals to overcome or improve the problems(s) iden- tified. + Methods to accomplish the goal (training, assistance, super- vision, treatments, emotional support). + Services necessary and who will perform the services. + Time frame for accom- plishing goals.		Social Services 405.1130(a) 442.334(a)(b)

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Respiratory Therapy F133 SNF 405.1124(c)	<ul style="list-style-type: none"> - Aerosol Compressor or IPPB (Intermittent Positive Pressure Breathing Machine). The surveyor must determine that the facility is providing respiratory therapy as ordered by the physician. Observation for this indicator should focus on the necessary equipment as well as on the resident. In order to determine that the necessary equipment is available, the surveyor must look for the following: <ul style="list-style-type: none"> + Aerosol compressor or IPPB Machine. Check that the machine is clean and operable. + Tubing - If tubing is not attached to the machine, ask to see it. Check that it is stored dry and with consideration for cleanliness. + Nebulizer Cup - should be attached to tubing. It is filled with either the prescribed medicine or distilled water only if about to be used. It should not be 	<p>While interviewing the resident, observe for sounds of congestion. Note color of lips and nail beds.</p> <p>Ask Resident:</p> <ul style="list-style-type: none"> - Do you ever feel short of breath? - If yes, what is done when this occurs? - Is the therapy helping you to feel better? - Are there any problems with it? - If so, how does the staff respond? - Is the therapy consistently performed - both concerning time and method of providing it. <p>Ask Staff:</p> <ul style="list-style-type: none"> - What is the reason the resident is getting this therapy? - What are the expected results? - Can you demonstrate how you use the equipment? - How often is the equipment cleaned? - What are the infection control procedures in regard to use of res- 	<p>The surveyor should determine that:</p> <ul style="list-style-type: none"> - Respiratory/oxygen therapy is performed or administered by appropriately trained staff. - There is a physician's order for therapy, and it is specific as to rate of delivery, etc. - If the physician's order is for prn therapy, it should specify for what symptoms. - Any information gained from resident or staff is verified in the record. - Assessment <ul style="list-style-type: none"> + The assessment should address both the need or reason for therapy and any problems or limitations which result from the need for therapy. - Plan of Care - The surveyor should note: <ul style="list-style-type: none"> + The kind, amount, frequency, and/or duration of therapy based on the physician's order. + Specific goals to overcome to improve any identified 	<p>Only qualified (trained) personnel should administer/assist with respiratory therapy. Therapy must be provided as ordered.</p> <p>The effectiveness of the therapy must be periodically evaluated and therapy revised as appropriate.</p> <p>Effective infection control measures must be practiced. Needed safety precaution for the use of oxygen must be practiced.</p> <p>Equipment should be available and in working order.</p>	<p>Staff Development 405.1121 (h) 442.314</p> <p>Infection Control 405.1135(b)</p> <p>Patient Care Management 405.1124(d) 442.341</p>

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Respiratory Therapy F133 (cont'd)	<p>stored wet. If it is not attached to the tubing, ask to see it. The mouthpiece is connected to the nebulizer cup.</p> <p>The surveyor should also check that all involved equipment is clean.</p> <p>- Oxygen Therapy</p> <p>The surveyor must establish that the facility is meeting the oxygen needs of the resident. When the facility does not have wall units, check that:</p> <ul style="list-style-type: none"> + There are enough cylinders for oxygen delivery. + There should be flow meters and regulators for tanks in use. + A wrench should be attached or stored close by. + If using large cylinders (size G or H), look for a carrier since these tanks cannot be transported without it. + The cylinder at the resident's bedside should either be on 	<p>piratory equipment?</p> <ul style="list-style-type: none"> - What training was given you in the use of this equipment? - Where is the emergency oxygen supply? 	<p>problems and/or limitations.</p> <ul style="list-style-type: none"> + Specific methods to accomplish the goals (observation, supervision, training, etc.). + Who is responsible to perform therapy or assist in accomplishment of goal. - Intervention - The record should display evidence that: + The plan of care is functional + The therapy was administered in accordance with physician's order for the specified reason(s) by an appropriately trained staff member + Change in condition is documented and acted upon promptly. - Evaluation/Reevaluation The record should reflect: + The resident's response to therapy. + If response was undesirable, evidence of further intervention. + Any progress, deterioration, or development of new problems. 		<p>Physical Environment 405.1134 (i)</p> <p>Medical Records 405.1132 442.318</p>

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Respiratory Therapy F133 (cont'd)	<p>the carrier, sitting on a metal skirt, or otherwise secured.</p> <ul style="list-style-type: none"> + There should be other necessary equipment available such as humidifiers, nebulizers, masks, nasal cannulas, I-pieces, etc., all should be dry and clean when stored. + Check to see that non bed-bound residents are not limited to their own chair/room when using oxygen (portable units will prevent social isolation. + Water reservoir is appropriately filled per manufacturers instructions. + Check to make certain the tank is not empty and that any tank is labeled as such. + Check for good oral hygiene of resident. + The room should be posted with a "No Smoking" sign. <p>- Residents on respirators-</p> <ul style="list-style-type: none"> + Are alarm systems turned on? 	<p>Residents on Respirators Ask Staff (all levels):</p> <ul style="list-style-type: none"> - What training have you had in caring for 	<ul style="list-style-type: none"> + Based on the above information, possible modification of goals. 		

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Respiratory Therapy F133 (cont'd)	<ul style="list-style-type: none"> + Is sufficient Oxygen supply available? + Is the ventilator accessible to an emergency outlet? + Is the resident in a location that allows for frequent observation by staff? + How does the resident communicate with staff? + What level of staff (aide, LPN, RN) caring for the resident? + Is such equipment at bedside? + Is there reserve back-up equipment? + What is the condition of the residents skin around intubation tube/tracheostomy. + Does the care given use appropriate technique in caring of the patient? 	<p>residents on respirators?</p> <ul style="list-style-type: none"> - Can you show me how the alarm system works? - What is your procedure for pulmonary care? - What is your procedure for changing tubing and the water reservoir? - What happens if the power goes off? 			

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Tracheostomy Care F133 SNF 405.1124(c)	<p>Satisfactory tracheostomy care is a procedure which promotes a clean, unobstructed air passageway and maintains the skin integrity surrounding the tracheostomy site.</p> <p>The surveyor should determine whether:</p> <ul style="list-style-type: none"> - Adequate supplies are available for the care of the tracheostomy such as tracheostomy kits, hydrogen peroxide, normal saline or sterile water, suction machine, catheter, sterile gloves, and clean dressings. - The resident is breathing without difficulty and is comfortable. - The dressing is clean, dry, and intact; the cannula is clean, in the proper position, and secured. - The skin surrounding trach is clean and dry with no redness or inflammation. - The resident has adequate oral hygiene. - An extra tube, the same size as the one in 	<p>Resident interviews must be guided by the resident's communication ability.</p> <p>Ask Resident:</p> <ul style="list-style-type: none"> - How long will you have it? - What care can you do for yourself? - What do you need help with? - Who helps you? - Is someone always available to suction him/her when needed? - Is the suction equipment always available in working order? - Is the dressing kept clean and comfortable? - Is the tube kept clean and changed as needed? - How often are the tubes and dressings changed? - Does he/she feel confident in the personnel caring for his tracheostomy? - What is communicating with staff and other residents like? - Are staff patient and do they allow you enough time to express your needs/thoughts/feelings? - May I observe your tracheostomy care? <p>Ask Staff:</p> <ul style="list-style-type: none"> - Why does resident have 	<ul style="list-style-type: none"> - The surveyor should determine that tracheostomy care is done as scheduled and as needed following the proper procedure. - Any special solutions that are needed should be addressed in the physician's orders. - Assessment - The record should reflect that the need for tracheostomy care was assessed in terms of: <ul style="list-style-type: none"> + Frequency + Skin integrity surrounding the tracheostomy, noting redness, inflammation, and/or excoriations. - Plan of Care should include: <ul style="list-style-type: none"> + Specific times of trach care and the responsible, appropriate trained person performing this task. + Specific problems relating to skin and breathing as well as the goals set to overcome these problems + Listing the appropriate personnel responsible. + Time frames for resolving problems 	<p>Stoma and surrounding skin should be in good condition and if not, there should be treatment directed to resolving this problem.</p> <p>All staff caring for the tracheostomy must be trained and emergency procedures must be known.</p> <p>All needed equipment must be available and in working order. Resident must at all times have readily available a means of communicating with the staff in an emergency.</p>	<p>Infection Control 405.1135 (b)</p> <p>Training 405.1121(h) 442.314</p> <p>Patient Care Management 405.1124(d)</p> <p>Physicians Services 405.1123(b)</p> <p>Social Services 405.1130(a)</p>

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Tracheostomy Care F133 (cont'd)	place, is available at bedside. - Does resident have an adequate method of communicating with the staff? - Does staff allow enough time for residents to communicate?	tracheostomy? - What training were you given to enable you to care for tracheostomies? - What is the procedure for tracheostomy care? - How often is the tube changed? - What do you do if the tube comes out? - May I watch you do a dressing change? - If not convenient, describe what you do. [- How do you communicate with a tracheostomized resident?]	<ul style="list-style-type: none"> + listed in goals. + Plan for periodic assessment of appropriateness of residents own self care re: teaching or nursing assuming more responsibility as appropriate. - Intervention - The surveyor should look for documentation of: <ul style="list-style-type: none"> + Trach care and oral hygiene administration, including responsible personnel, time and date, and effects. + Any problems or changes noted in resident condition (e.g., redness, swelling, tracheal obstruction). + Emotional response to tracheostomy. - Evaluation/Reevaluation <ul style="list-style-type: none"> + Resident is or is not benefiting from trach care and skin care. + If problems are noted, the progress notes and plans for care should indicate changes in treatment. + Resident's emotional response to care of the tracheostomy should be evaluated. 		

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Tracheostomy Care F133 (cont'd)			since this may require additional care planning.		
Suctioning F133 SNF 405.1124(c)	<p>Suctioning is necessary for any resident who is unable to cough up secretions that are obstructing his airway. Suctioning may occur via the oral or nasal route, or stoma route with sterile technique. Attempts should be made to observe a resident being suctioned should such an opportunity arise. If so, observe that a clean/aseptic technique is observed throughout and that the resident tolerated the procedure. There should not be bloody aspirant, cyanosis, or bronchospasm. Check that equipment is in good working order, frequency of procedure, etc.</p> <p>Resident observations which indicate need for intervention include:</p> <ul style="list-style-type: none"> - Secretions are draining from a resident's mouth or trach and the resident is unable to 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - How are you feeling now after the suctioning? Does the suctioning seem to help? - Has staff explained to you the need for suctioning? Why do you need to be suctioned? How often? - Who performs the suctioning (i.e., nurses or nurses aides)? Do you feel safe with the staff performing the suctioning? - Does everyone do it about the same way? <p>Ask Staff:</p> <ul style="list-style-type: none"> - When and where did you learn to suction? - Tell me what procedure you use when you suction a resident. - Do you always have enough suction machines and catheters? - How frequently is suction tubing changed? - What provisions do you have for suctioning if the electricity is lost? 	<ul style="list-style-type: none"> - Assessment - The record should reflect that: + The resident is frequently observed for suctioning needs. + Any limitations a resident has as a result of his suctioning needs should be specifically noted. + Any problems resulting must be specified. - Plan of Care should include: + Awareness of the resident's suctioning needs, goals, approaches, and responsible staff needed to improve the problem or at least to maintain the resident at his present status without further deterioration. The plan must clearly indicate specific approaches towards: <ul style="list-style-type: none"> - Prevention of skin problems around the trach if one exists. - Correction of any existing skin pro- 	<ul style="list-style-type: none"> - All equipment must be available and in working order. - All staff caring for the resident must know what to do in an emergency. - Current professionally accepted standards of care must be maintained. 	<p>Infection Control 405.1135(b)</p> <p>Patient Care Management 405.1124(d)</p>

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Suctioning F133 (cont'd)	<p>cough or clear himself.</p> <ul style="list-style-type: none"> - There are audible crackles or wheezes and/or diminished breath sounds. - The resident is dyspneic. - Restlessness or agitation may also be an indication that suctioning is needed. <p>Upon completion of suctioning above symptoms should, in most cases, be relieved. The surveyor should observe that the resident is positioned to facilitate breathing (usually at a 45 degree angle). Check to see that the facility has an ample supply of suction machines and suction catheters to meet the needs of residents requiring them and that they are clean and properly stored.</p>	<ul style="list-style-type: none"> - Where are your emergency electrical outlets? - What is your procedure for disposing of the secretions from suctioning? - How often does Mrs./Mr. need to be suctioned? - May I observe you when you suction Mrs./Mr.? 	<ul style="list-style-type: none"> - blms. - Provision of good oral hygiene including a rigid schedule for mouth care, schedules, or procedures for maintaining clean equipment at bedside, as well as disposal of used (dirty) equipment. - Route of suctioning (i.e., oral/nasal/trach). - Intervention - The record should indicate clearly that: + The plan of care is being implemented. Documentation should reflect: + The number of times the resident required suctioning, for what specific reason, and by whom the resident was suctioned. + Any special treatment the resident received in conjunction with suctioning 		

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Suctioning F133 (cont'd)			(i.e., oral hygiene, skin care, etc.). - Evaluation/Reevaluation reflect: + How well the resident tolerates suctioning procedures. + Any bloody aspirant, cardiac arrhythmia, cyanosis, or bronchospasm. + Further interventions utilized to overcome or improve these. + The amount of sputum as well as its color and consistency. + Any progress or lack of progress, deterioration, and/or the development of new problems. + The evaluation should determine whether goals are being reached or if new goals must be addressed.		
Tube Feedings F133 SNF 405.1124(c)	- Staff use proper technique in administering feedings and medications. Check to see that staff checks for location of tube before feeding and that tubing	If the resident is able to be interviewed, suggested questions may be: Do you feel comfortable/safe with all the staff who perform the feeding?	Tube Feeding Review: - Plan of care - Must document tube placement and formula potency prior to each feeding.	- Has the feeding been ordered by a physician? - Is tube feeding nutritionally adequate? - Have attempts been made to discontinue tube feeding if indicated?	Nursing Services 405.1124(d)(f) 442.338(a)(2) Meal Service 442.331(c)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tube Feedings F133 (cont'd)	<p>is irrigated before and after addition of medication.</p> <ul style="list-style-type: none"> - The tube is clean and formula flows freely. - The equipment is clean and protected. If dressings are ordered, they are in place, clean, and dry. - The nasal tube is securely but comfortably secured on the face with skin maintained intact and without irritation. - The skin around the gastrostomy is kept clean and free from irritation or infection. It should be checked carefully for leakage of gastric contents. - A resident who has a N/G tube for a prolonged period of time should be observed for possible complications, such as nasal erosion, sinusitis, esophagitis, gastric ulceration, and pulmonary infection. - Resident is fed slowly with head elevated to 45° during feeding and at least 1 hour post-feeding. 	<p>If not, what happens?</p> <p>Are you losing or gaining weight? What is your goal?</p> <p>Ask Staff:</p> <ul style="list-style-type: none"> - Please describe how you would carry out a resident's tube feeding. 	<ul style="list-style-type: none"> - In the case of continuous feeding, tube placement must be documented at least every 4 hours. - Naso gastric tube must be secured in a manner that avoids creating pressure on the nose and nasopharynx. - Identify frequency, amt. of feeding based on the physician's order and time span over which each feeding is accomplished. - Medication and treatment records. - Fluid intake records. - Number of calories as well as amount of additional water. - Documentation present regarding removal and reinsertion of tubes. - Record should indicate measures taken to prevent diarrhea and constipation and to treat if they have developed. 	<ul style="list-style-type: none"> - Is skin free from irritation; mouth care is given several times daily? (More frequent mouth care in the case of continuous feeding.) - Have changes in resident condition been noted and addressed (weight loss, constipation, diarrhea, skin condition)? - Have observed problems been coordinated with other departments and resolved? - Is feeding being monitored to ensure that feeding is occurring at the ordered/appropriate rate? - Varied supplements as preferences allow? 	Dietetic Services 405.1125(c)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tube Feedings F133 (cont'd)	- Supplies for mouth care are in evidence, observe if possible for technique; mouth shows evidence of good care (i.e., moist, clean.)				
Nursing Services F137 SNF (405.1124) ICF (442.338) B. Twenty-four hour nursing.	Are personnel performing duties that are allowed under the State Nurse Practice Act? Do you observe care being rendered in an appropriate, competent manner?	Ask Resident: - Do residents generally feel that people taking care of them know what they are doing? - If no, explain. - Are your treatments done in a consistent manner? - If no, explain. - Do you feel that there are enough people here to take care of you? - If no, explain. - How long do you usually wait for help when you put your call light on? - Is there anything that doesn't get done as often as it should? Ask Staff: - Do you feel qualified to do all the work you are assigned to do? - If no, explain. - Do you feel you have enough training to keep up with the care the residents require?	- Review progress notes to determine who is giving care. - Review care plan to determine who the facility has assigned to care responsibility to. - Check staffing sheets for minimal requirements and time and attendance for actual staffing. - Review charts maintained for ADL medications, I & O, restraints, etc., to assure that sufficient staff are available for carrying out responsibilities as specified in patient care plans.	All nursing personnel must function within their State Nursing Practice Act. Levels of staffing meet at least minimum requirements. Nursing care needs must be identified by the facility & documentation, resident and staff interviews should determine if these needs are met. All nursing staff should have education or training to prepare them for the care they perform.	Patient Rights 405.1121(k)(g) Patient Care Policies 405.1121(l) Medical Records 405.1132(c) 442.318(a)(c) Patient Care Management 405.1124(d) 442.341 Staff Development 405.1121(h) 442.314
F137 1. Assigned duties consistent with their education and experience/ based on the characteristics of the resident load.	Does the time schedule posted indicate that at least the minimum required personnel are scheduled and actually on duty? What is the usual response time before a call bell is answered?				
F138 2. Weekly time schedules are maintained.	In SNF's is an RN on duty during the day? Are licensed staff and aide staff functioning in appropriate roles? Where are staff spending their time?				
F139 3. There is a sufficient number of nursing staff					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F139 (cont'd) available to meet the total needs of all resi- dents.	Check for staff who are actually on duty.	- If no, what else do you need?			
F140 4. There is a registered nurse on the day tour of duty 7 days a week (for SNF only). <u>Intent</u> That all resi- dents are cared for by personnel qualified to pro- vide the care & that sufficient numbers & class- ifications of personnel are available.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Patient Care Management F167 SNF 405.1124(d) F168 ICF 442.341	Observe resident level of physical, mental, emotional and social functioning. Note problems, potential problems, needs, using observation/interview/record review work sheet.	Ask Resident: - Are you aware that you have a plan of care? - Did you participate in developing a plan of care? - Do you/your family know what the plan is and details? (e.g., diet, ambulation, dressing, etc.) - Do you attend and participate in plan of care meetings? - Who else attends the plan of care meetings? - When did you last attend the meeting for your plan of care? - Does the staff assist you in achieving the goals on the plan of care? If not, who does or why not? - Do you have all necessary assistive devices and equipment? - Is there anything that is not part of your plan of care that you think should be included? - What happens if you question any treatment or procedure? Can you give an example?	Review: - Plan of care The content of the plan of care is of primary importance rather than the format. Separate care plans are not required for each discipline, but may be accepted if there is evidence that the various disciplines coordinate their planning. - Nursing assessment/reassessments and notes. - Physician orders. - Assessment notes. - Assessments/evaluations and progress notes from all professional disciplines as appropriate. - Medication and treatment records as applicable. - Lab reports, as applicable.	- Are all resident's needs/problems identified? - Is the plan developed to meet these needs? - Does the plan demonstrate an interdisciplinary approach, and include: + Goals stated in measurable/observable terms? + Approaches (staff action) to meet the resident action goals? + Responsible disciplines/staff responsible for approaches to assist resident in achieving goal/goals? + Is plan being reassessed and changed as needed to reflect current status? + Does plan of care accurately reflect information gained from observation, interview and record review?	Physician Services 405.1123 442.346 Medical Records 405.1132 442.318 Resident Rights 405.1121(k) 442.311 24 Hour Nursing Service 405.1124 442.338 Specialized Rehabilitation Services 405.1126 442.343 Training 405.1121(h) 442.314 Resident Rooms 405.1134(e) 442.325 442.326 Infection Control 405.1135 442.328 442.324
F170 8. Each professional service identifies needs,					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F 170 (cont'd)</p> <p>goals, plans, and evaluates the effectiveness of interventions plus institutes changes in the plan of care in a timely manner.</p> <p>INTENT</p> <p>The intent is to assure that the facility identifies the resident's (with residents/family input if applicable) needs through the coordinated efforts of all disciplines.</p>		<p>Ask Staff:</p> <ul style="list-style-type: none"> - What is your input into resident's plan of care? - What aspect of the resident plan of care are you carrying out? - What is this particular resident's plan of care? - How do you assist the resident in carrying out the plan of care? - Who attends the care planning meeting? - Is the plan of care useful to you in caring for the resident? - Is there anything the resident needs that is not addressed in the plan of care? - How often is it reassessed? 			<p><u>Social Services</u> 405.1130 405.1130(a) 442.344(d)</p> <p><u>Activities</u> 405.1131 442.345</p> <p><u>Dietetic Services</u> 442.1135 442.332</p>

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Restorative Nursing Activities of Daily Living F171-176 SNF 405.1124(e) ICF 442.342 442.343(a)(c)	A. Observe residents in need of assistance. 1. Is needed assistance provided? 2. Is resident provided assistance and instruction, in as appropriate, in all ADL's to increase his/her level of independence? 3. Does staff minimize pain/discomfort while assisting resident? 4. Is resident taught transfer techniques? 5. Is resident assisted to toilet in timely manner? 6. Resident personal equipment available & within reach? Glasses Hearing aids Dentures [Artificial larynx]	Ask Resident: - What assistance do you need with bathing and/or dressing? Who helps you? - Does the staff plan with you your dressing/bathing schedule? - Do the nursing and activities staff coordinate your schedule so that you have the opportunity to participate in favorite activities? - Are you able to dress/bathe at times convenient for you? - Are you bathed consistently? (i.e., on the day(s) scheduled does the bath get performed?) - Where are you bathed? (bed, shower, tub?) - Are there adequate clothes available for you to wear? - Do they come back from laundry in appropriate condition? - How do you get in and out of bed? - If staff assists you, do they seem to be able to do their job appropriately? Do you always feel safe when	Review: - Plan of care + Reflects assessment, goals, methods to reach goals, service providers, evaluation, and achievement. + Addresses restorative nursing assessment, program initiation, implementation and evaluation of the progress over a reasonable time period. Professional judgment determines the assessment of appropriate time frames. + Identifies planning for potential discharge for all residents to determine a disposition on home care or an alternate level of care. - Nursing Notes + Demonstrate evidence of assessment, intervention, response to treatments/teaching and their progress toward independence, a maintenance level, or a deterioration. + Provide evidence of interdisciplinary conferences.	Are patient needs identified? Verify that the plan of care addresses resident needs and is implemented as scheduled and that all appropriate information is documented. If goals are not reached, has a reevaluation been performed and goals revised? Does restorative nursing assist the resident to acquire a higher level of independence? Is sufficient time allowed to resident for learning to increase his/her level of independence? Are assistive devices used regularly as per plan and are they in good repair? Is there an assessment, and if appropriate, a plan for each ADL that the resident needs to gain independence in? Maintenance goals should be noted as appropriate.	Physicians Services 405.1124(a)(b) Nursing Services 405.1124(a)(b)(c) 442.342 Dietetic Services 405.1125(a) 442.331(c) Activities 405.1131(a)(b) 442.345(a)(b) Specialized Rehab. Services 405.1126 442.343(e)(1)(2)
<u>INTENT</u> To assist the resident to attain or maintain his/her maximum level of independence and function?					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F171-176 (cont'd)	Prosthetic devices (eg. braces, artificial extremities). Adaptive equipment (e.g., built-up spoon, reachers). Orthotic devices (eg. splints, AFO's). Restraints (eg. vest, waist, wrist, ankle, mitts, nets, geri-chairs). Grooming items (eg. comb, brush, shaver). Oral hygiene (eg. toothbrush, toothpaste, mouthwash, denture cup). Self-feeding devices. Assistive devices for special sensory loss needs (eg. communication boards, large print books, magnifiers, writing tablets, picture cards, talking books).	being helped? - Are staff members encouraging you to do things for yourself? - Do you have any problems getting to the bathroom on time? - Do you have any problems with leakage when you sneeze, laugh or at any other particular time? - How does the staff help you with these problems? - Are they aware of the problems? - Do you bowels move regularly? - If not, what do you/staff do about this? - Are you able to feed yourself? - Are you able to get to the dining room by yourself? If not, why? In that case, what does staff do about this? - How long have you been up today? - Do you usually lie down for a rest? - If you need help getting into or out of bed, is staff available to help you when you need it? - Where do you spend most of your time - in your chair, wheelchair or in bed?			
ADL's (cont'd)	Training/re-training Prosthetic management Stroke adapted ADL's Self-injections of medications Bowel/Bladder Self-feeding Self grooming Ambulation				

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F171-176 (cont'd)	<p>Colostomy/Ileostomy Care Respiratory Care (oxygen inhalation) Speech Mobility Upper extremity dressing Lower extremity dressing</p> <p>Observe at mealtime whether staff encourages/guides residents in self-feeding or feeds the residents.</p>	<p>Does anyone move your arms or legs or help you with exercises?</p> <ul style="list-style-type: none"> - Have your sleeping habits changed since you came to the nursing home? If yes, in what way? - Are you able to get help during the night if needed? + What kind of help is needed? + Is staff response timely? - Do you feel there are adequate care supplies at this facility? - If not, can you give me an example of why you feel this way? - Is your family involved in assisting you or if learning to help you? - Do you feel there is adequate staff at this facility? - If not, can you give me an example of why you feel this way? - Does staff assist and/or encourage activities (e.g., R.O.M., ambulation ADL, communication programs, feeding)? - How often does staff assist in activities? - Is there anything resident would like to do 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F171-176 (cont'd)		<p>for himself/herself that staff is doing?</p> <ul style="list-style-type: none"> - Is resident comfortable (e.g. free from pain)? - Is your cane/walker/crutches comfortable for you to use? - Did anyone measure you so you have the right size cane/walker/crutches? - Did anyone show you the correct way to use your cane/walker/crutches? - If the facility arranged so that you can get around easily? <p>Ask Activities Staff</p> <p>Do you provide information to nursing staff about time and place of activities, plus names of residents who are to attend or those who might be interested in attending?</p> <p>Chair-bound Resident</p> <p>Ask Resident:</p> <ul style="list-style-type: none"> - Does he/she know why he/she is in a chair? - Is resident assisted to use bathroom? - Is resident comfortable? - Does he/she see therapist? (O.T., Speech, P.T.) and how often? - Does resident go to a 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F171-176 (cont'd)		<p>therapy area or does therapist come to resident?</p> <ul style="list-style-type: none"> - Is able to reach items needed? <p><u>Ask Nurses Aide</u></p> <ul style="list-style-type: none"> - Who give you information about the time and place of activities and which residents are to attend? - How are you given this information? - How do you encourage a resident to do the most for himself? <p><u>Wheelchair Resident</u></p> <p><u>Ask Resident:</u></p> <ul style="list-style-type: none"> - Does he/she know why he/she needs a wheelchair? - Is resident trained and/or encouraged in independent W/C ambulation and activity? - Does resident know how to lock and unlock wheelchair? <p><u>Ask Staff:</u></p> <ul style="list-style-type: none"> - How is a resident set up for independent W/C ambulation? - Nurse Aide - has resident received instruction in transfer techniques? <p><u>For Bed Bound Resident</u> In addition to appropriate interview questions above:</p>			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F171-176 (cont'd)		<p>Ask Resident:</p> <ul style="list-style-type: none"> - How do you spend your day? - Can you do some things for yourself? - Does the staff give you a chance to learn self-care skills? <p>Ask Nurse:</p> <ul style="list-style-type: none"> - If the resident had access to a recliner chair, would he/she be able to be out of bed? - Is the time out of bed coordinated with the activity schedule and necessary care? <p>Ask Nurses Aide:</p> <ul style="list-style-type: none"> - Does this resident do any self-care? Why not? - If no, has anyone tried to teach him/her to do some care? 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Positioning F175 SNF 405.1124(e)	Observe residents in bed, chairs, restrained, or in "protective devices" for: - body alignment - positioning - contractures (when did they occur and what is being done)? - ROM program (observe extent & technique of provider) - Assistive devices (overhead pulleys, slings, splints, etc.) - Turning/repositioning schedule and adherence to the schedule. - Devices to maintain positioning, i.e., sandbags, extra pillows, etc.	Ask Resident: - How often are you turned/repositioned by the staff? - Is that often enough? - Are you comfortable now? - Do you have any pain or discomfort? Where? - How long have you had joint stiffness (contractures)? - What kinds of exercise do you do every day, including range of motion (ROM)? How long does the exercise last and how frequently do you exercise each week? - Do you wear special devices? How often? - Consistently? - Are they always applied and removed appropriately and promptly? - How Often? - By whom? Bed Rest Resident Ask Resident: - Why do you have to stay in bed? - How often does staff get you OOB? - Do they know how to get you up? - Who sets you up and/or assists you in bedside ADL's? - Does staff, therapist check positioning, supportive devices?	- MD orders for non-nsg interventions/treatments. - Plan of care should include at a minimum: + Restorative goals + specific joints to be exercised + devices to be used in positioning + frequency of treatment or repositioning information + resident teaching + services responsible for carrying out the procedures + time frames for reaching goals - Nursing progress notes indicate: + Plan has been implemented + progress toward goals + Response to information from reevaluation/repositioning schedule	Plan of care should be complete (addressing resident positioning needs) and plan is implemented on a daily basis. Care givers are knowledgeable re plan content. Residents are turned as scheduled. In good body alignment with proper assistive devices & equipment. Contractures are prevented and/or treated. Plan is reviewed, reevaluated and revised at least quarterly, but must be done as often as patient condition dictates. Ask aide assigned to demonstrate the hand holds he/she uses for ROM. If aide doesn't know, ROM is probably not being done. Do it "at bath time" is not sufficient.	Rehabilitative Services 405.1126(h) 442.343(c)(2) MD Orders Activities Resident Rights Nursing-Staffing Inservice Social Service Dietary
Intent To assure that the resident is positioned at all times to promote maximum therapeutic benefit and comfort, as well as safety.	Specific Observations for the Bed Resident (as appropriate to condition). Positioning/body alignment Resting splints & correct application Foot positioning boards Trapeze Hand rolls Elbow/leg splints & correct application Restraints Siderails (padded) Special mattresses				

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F175 (cont'd)	<p>Blankets/pillows Clean, smooth linen Clean, appropriate bed wear Turning schedules ROM schedule O.O.B. (as tolerated) Water available All adaptive devices are clean and in good repair. All assistive supportive devices are clean and in good repair.</p> <p>Specific Observation for the QOB Resident in Chair (geri-chair, lounge chair in room, as appropriate to condition) Arrangement of room facilitates residents optimal independence (e.g., independent eating, grooming, T.V., radio, water). Positioning/body alignment. Blankets/lap robe, pillows, foot stool. Hand rolls, splints. Clean, dry attire. Pressure relief device. Restraints, with release & activity schedule. Call bell available.</p>	<ul style="list-style-type: none"> - When? - Does staff answer call bells promptly? How soon? - Is resident able to reach items (e.g., water call bell, urinal, emesis basin, tissues)? - How much confidence do you have when the nurses are helping you transfer, or turn and so on? - Does resident go to therapy area or does therapist come to resident? <p><u>Bed Rest Resident</u> <u>Ask Staff:</u></p> <ul style="list-style-type: none"> - How often is position changed? - What activity is done at the time (e.g., R.O.M., toileting, OOB, grooming)? - What can resident do independently? - Is equipment available? - Who maintains and cleans the equipment? - What is the schedule for this? - What training have you had to learn to position patients correctly? 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F175 (cont'd)	<p><u>Specific Observation for the Wheel Chair Resident</u> (as appropriate to condition, including deliberate alterations made to equipment for specific reasons.)</p> <ul style="list-style-type: none"> - Proper fit - Good working condition - Appropriate arm rest, footrest, leg support, lap tray - Proper positioning - Pressure relief aids, (e.g., gel flotation pads, egg crate mattress, sheepskin) - Set up for independent W/C ambulation - Functional adapted toilet area - Transfer techniques <p>Observe how staff wheel the resident (e.g., do they inform before starting movement)?</p> <p>Are patients moved wheeling forward and facing elevator doors?</p> <p>Observe staff for:</p> <ul style="list-style-type: none"> - verbal cues - physical support - body mechanics <p><u>Specific Observation for the Ambulatory Resident</u> (as appropriate to condition)</p> <ul style="list-style-type: none"> - Gait (steady/unsteady) - Appropriate devices for 	<ul style="list-style-type: none"> - Was there any part of your orientation when you first came to work here that addressed positioning? - Do you have any periodic reviews/updates on positioning? <p><u>Chair-Bound Resident</u> <u>Ask Staff:</u></p> <ul style="list-style-type: none"> - How often is resident repositioned/taken out of chair? - What is the activity at time of repositioning and/or release of the restraint? - What can resident do independently? <p><u>Ambulatory Resident</u> <u>Ask Staff:</u></p> <p>Is resident encouraged to independently ambulate to and from activities and dining room (with or without personal assistance)?</p> <ul style="list-style-type: none"> - Does resident do as much as he/she can independently? - What does resident do? - How do you know that resident is maximally independent? - If it is not working independently, how do 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F175 (cont'd)	ambulation (e.g., cane, crutches, hemi-sling) - Posture - Appropriate staff assistance in ambulation - Grab bars (halls, bath/shower area) - Functionally adapted toilet area	you deal with it? - Is there something resident would like to do that he/she is not allowed to do (e.g., shave self, apply make-up, style own hair)? - What training have you had in learning to position residents and do range of motion? - What opportunity do you have for ongoing training? - Who does the actual training? Check question placement under Interviewing. May be more appropriate for resident's rights section. Observe wheeling technique used by staff.			
Nursing Services G. Administration of Drugs F183-184 SNF 405.1124(g) ICF 442.337 F186 1. The patient is identified prior to administration of a drug.	Observe a drug pass with at least 20 residents receiving medication. See SOM Appendix N. Transmittal No. 174 for details of the Surveyor Methodology for Detecting Medication Errors. - Observe medication administration techniques (e.g., hand-	Ask Resident - Do you always receive your medication on time? - If not, what is the problem? - Do you receive the correct medication? - What does it look like? - Who explained your medications to you? - What reactions do you have? - What happens if you have a question or refuse to take your medication? - Who gives you your medication? - Do your medications change in appearance?	Review the medication administration record. (as appropriate) See S.O.M. Appendix N, Transmittal No. 174 for details of the record review.	If the combined total of significant & non-significant errors is 5% or above, a deficiency is present. Any significant error is cause for a deficiency. See Appendix N for details.	Physician Services 405.1124(b)(7) Pharmaceutical Services 405.1127(a) 442.336(a)(b)

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<p>F187 2. Drugs and biologicals are administered as soon after doses are prepared.</p> <p>F188 b. Administered by same person who prepared the doses for administration except under single unit dose packet distribution system.</p> <p>Exception: ICF residents may self administer medications with their physician's permission.</p>	<p>washing, pouring of dosage, position of resident).</p>	<p>- Do the nurses stay with you when you take your medication?</p> <p>- Do any of the medications bother you?</p> <p>Ask Staff:</p> <p>- Do you generally have available the medications you need?</p> <p>- Are there any problems in administering medications?</p> <p>Note drug doses refused by resident and how handled by staff.</p>			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
H. Conformance with Physician Drug Orders F189 F190 F191 SNF 405.1124(h) ICF 442.334(a) Drugs are administered in accordance with written orders of the attending physician. <u>Intent</u> All residents receive medications as ordered by the physician.	Combine with observation of drug pass.		<ul style="list-style-type: none"> - Review the latest recap of the physicians orders - Review the medication administration record (as appropriate) - See S.O.M. Appendix N, Transmittal No. 174 for details of the record review. 	See Appendix N for details	Physician Services 405.1123(b)(7)

SURVEY AREA CROSS REFERENCE	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	
DIETETIC SERVICES (Condition of Participation) F193 SNF (405.1125)	<ul style="list-style-type: none"> o Specific Observations which might be indicative of possible nutrition problems: <ul style="list-style-type: none"> Clinical <ul style="list-style-type: none"> - underweight/overweight - dehydration - edema - cracked lips - pallor - dull or dry hair - swollen or red tongue - bleeding gums - decubitus ulcers - infections o Physiologic factors which may affect intake: <ul style="list-style-type: none"> - Swallowing difficulties - Vomiting - Food intolerance - Poor dentition - Sore mouth - Constipation - Diarrhea - Inability to feed self - Decreased visual and olfactory acuity - Unable to communicate - Loss of appetite o Psychological/Social <ul style="list-style-type: none"> - Confusion 	Ask dietary manager to explain the procedure for making substitutions and recording the changes. <ul style="list-style-type: none"> - Is menu usually followed? Ask Resident: <ol style="list-style-type: none"> 1. How are your meals? 2. Are there foods you are not allowed to have? 3. Are you on a special diet? 4. Do you receive foods that are not appropriate for your diet? If so, what do you and the staff do about that? 5. What time do you receive breakfast, lunch, and supper? Do you always receive a meal at mealtime? If not, why? What happens then? 6. Do you like the taste of the food? 7. Is the temperature appropriate (i.e., milk chilled, coffee hot, etc.)? 8. Do you get enough to eat? What do you do if you're still hungry after a meal? 	Review Nutrition assessment for the following documentation: <ul style="list-style-type: none"> o Usual/ideal body weight/height o Dietary allergies/sensitivities, ability to chew and swallow regular foods without difficulty. o Full or partial dentures o Mental and emotional condition o Physical appearance, skin condition o Appetite and food preference. o Vitamin and mineral supplements. o Food and fluid intake in measurable terms and frequency of meals. o Degree of assistance needed in eating, related mobility, vision, or other identified problems. o Medications (e.g., diuretics, insulin, antibiotics, etc.) o Related laboratory findings (e.g., fasting blood sugar, cholesterol, sodium, potassium, hemoglobin, BUN, serum albumin, transferrin or creatinine-height index if available). 	<ul style="list-style-type: none"> o Were physician diet orders followed? o Did nursing plan for feeding and assistance at mealtime? o Is there rehabilitative use of assistive devices, if appropriate? o Is modification of consistency of meals made if resident has a problem or change in condition? o Are between meal and bedtime snacks provided as needed? o Is socialization at meals provided? o Has dietitian provided counseling of resident and family as needed (related to diet)? o Usual body weight is maintained/supported? o Is there evidence that the plan is being carried out (e.g., documentation in the resident's chart, observation by the surveyor, and resident/staff interviews)? If the resident refuses meals or does not respond to intervention, the notes in the chart should indicate efforts to intervene or provide counseling. 	Physician Services 405.1123 442.346 Medical Records 405.1132 442.318 Nursing Services 405.1124(e)(f) Specialized Rehabilitative Services 405.1126 Patient Care Management 405.1124(d)
F196 Menus are planned and followed to meet the nutritional needs of each resident in accordance with physicians' orders and, to the extent medically possible, based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196(cont'd) Intent Ensures that each resident receives food in the amount, kind, and consistency to support optimal nutritional status.	<ul style="list-style-type: none"> - Excessive food likes and dislikes - Refusal to eat - Selected biochemical changes which might indicate changes in nutritional status: <ul style="list-style-type: none"> - Visceral protein status - serum albumin - transferrin - BUN - Serum electrolytes - During mealtime observe the resident for: <ul style="list-style-type: none"> - adherence to food preferences - adequate space for eating - self-feeding skills - proper position for eating - ability to eat foods served - use of adaptive feeding devices - amount of food actually eaten - protection of resident's clothes - amount of time resident is allowed to chew and swallow - Assistance provided as needed to and from dining area - All beverages are covered] 	<p>9. Do you receive nourishment in the evening? Do you have a choice about what you want to eat?</p> <p>10. Do you receive medicines during meals? If yes, do you know what it is or what it is for?</p> <p>11. Do you get food from outside of facility that you buy or family brings? How often? What kind of food?</p> <p>12. How often does anyone from the kitchen come to ascertain your feelings and opinions on the food service, your portion size, etc.?</p> <p>13. Where do you eat (e.g., dining room, your room, etc.)? Is this your choice? Do you have a choice of where you eat?</p> <p>14. How often have you seen a therapist for your swallowing difficulties? "How has the therapist instructed you/staff/family on methods to improve your swallowing?"</p> <p>Ask Dietician</p> <ul style="list-style-type: none"> - Describe the meal planning input you receive from residents. 	<ul style="list-style-type: none"> - Food/drug interactions - Mental/emotional assessment as it relates to resident's food habits. <p>Review:</p> <ul style="list-style-type: none"> - Plan of Care - Nursing Notes <p>Review:</p> <ul style="list-style-type: none"> - Physicians orders - Progress notes - Notes from other professional disciplines as appropriate. <p>Nutritional status depends not only on adequacy of the food and how the body uses it. While the surveyor is not responsible for individual nutritional assessments of residents, when specific information is needed during the survey to make a compliance decision, the surveyor will utilize the following minimum assessment guideline:</p> <p>Menu Evaluation</p> <ul style="list-style-type: none"> - Adequate in energy and nutrients <ul style="list-style-type: none"> - Protein - Calories 	<p>Is there evidence that the resident's progress is regularly observed (e.g., awareness of food and fluid intake such as acceptance of foods, food consumed, and resident's appetite)?</p> <ul style="list-style-type: none"> - Is fluid intake for resident encouraged, Foley catheter, problem feeders monitored? - Is there general evidence as to whether poor resident conditions are due to poor care or whether the facility has taken appropriate measures to prevent or resolve problems. - Is there indication of progress toward desired outcomes? If not, is the evidence of re-evaluation available within specified time frames? - When the anthropometric and clinical data do not correlate with dietary data, (food intake, dietary supplements) the surveyor should take note that the problem may not be nutritional. 	Nursing Services -405.1124(f)

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196(cont'd)	<p>Assistance being provided in case of choking, incontinence, falling, or other emergencies.</p> <p>Nursing Staff supervision of dining areas including residents' rooms during meal times.</p>		<p>- Vitamin C - Calcium Selected evaluation of residents for in depth review:</p> <p>A check list can be used to evaluate daily menus for basic foods: (use standard serving portions) Daily food plan should include: MILK GROUP 1 pt milk MEAT GROUP</p> <p>5 equivalents: * 1 equivalent equals 1 oz. of meat (edible portion) weighed after cooking (this includes eggs, dried peas, beans, nuts, and all meat, fish and poultry).</p> <p>VEGETABLE AND FRUIT GROUP</p> <p>5 servings or more, including a dark green or deep yellow vegetable for vitamin A value every other day and a citrus fruit or other fruit rich in Vitamin C daily.</p>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196 (cont'd)	<p>Observe serving portions sizes on all menu items:</p> <p>MILK GROUP - 1 pint daily Source of: Protein Calcium Phosphorus B Complex</p> <p>MEAT GROUP - 5 lean meat equivalents (1 meat equivalent = 1 oz meat, poultry, fish, cheese & eggs; also dried peas, beans, and nuts). Source of: Protein Iron Vitamin B12</p> <p>VEGETABLE AND FRUIT GROUP - 5 servings or more (1/2 cup = 1 serving) Source of: Vitamin A, C, B6, Folic acid, Fiber</p> <p>BREAD-CEREAL-POTATO-LEGUME-PASTA GROUP - 7 servings (1 serving = 1 slice bread; 1/2 cup other; 3/4 cup flake-type cereal).</p>		<p>BREAD-CEREAL-POTATO-LEGUME-PASTA GROUP 7 servings FATS AND SWEETS (Without this group the diet contains 1,415 Kcal) Diets should be adapted from facility's currently approved diet manual. Menus are dated and contain minimum portion sizes. Are substitutions noted on the file copy? Are substitutions made within the same food group i.e., meat for another source of protein in the meat group, or vegetable of similar nutritional value?</p>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196 (cont'd)	<p>FATS AND SWEETS (to increase caloric intake)</p> <p>IODIZED SALT (unless contraindicated)</p> <p>Adequate fiber in diet</p>		<p>o Documentation of decision to withdraw or begin artificial feeding and hydration.</p> <p>Check menus for variety</p> <p>Are they specific (i.e., states kinds of fruit, juice, vegetable)?</p> <p>DIETARY SERVICES</p> <p>SELECTED NUTRITIONAL REQUIREMENT RECORD REVIEW</p> <p>N.B. The basal energy expenditure (BEE) and calorie requirement using Harris-Benedict formula recognizes the variation in energy needs for individuals.</p> <p>1. <u>Anthropometry- Weight/Height</u></p> <p>NOTE: The following sample formulas and guidelines are not the only acceptable guides available. The surveyor should ask to use the assessment guidelines used by the facility before using the ones provided here.</p> <p>o Important indicator of nutritional outcomes.</p> <p>o Disease state can have adverse effect on desired body weight.</p>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196 (cont'd)			<p>2. <u>Weight for Height Calculation</u></p> <p>Females:</p> <p>Allow 100 lbs. for first 5 ft. of height plus 5 lbs. for each additional inch</p> <p>Males:</p> <p>Allow 106 lbs. for first 5 ft. of height plus 6 lbs. for each additional inch</p> <p><u>Estimating Caloric Needs</u></p> <p>1. <u>FORMULA: Harris-Benedict Equation</u></p> <p>Men: $66 + (13.7 \times \text{Wt. in Kg}) + (5 \times \text{Ht. in cm}) - (6.8 \times \text{Age}) = \text{BEE}$</p> <p>Women: $65.5 + 9.6 \times \text{Wt. in Kg.} + (1.7 \times \text{Ht. in cm}) - (4.7 \times \text{Age}) = \text{BEE}$</p> <p>Parenteral Anabolic: $1.75 \times \text{BEE}$</p> <p>Oral Anabolic: $1.5 \times \text{BEE}$ (Kcals)</p>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196 (cont'd)			<p>Oral Maintenance: 1.20 x BEE (kcal)</p> <p><u>Metric Conversions</u> (Approx)</p> <p>pounds (lb.) x 0.45 = kilograms (kg)</p> <p>inches (in.) x 2.5 = centimeters (cm)</p> <p><u>Estimating Protein Needs</u></p> <ol style="list-style-type: none"> 1. Allow 0.8 gram protein per kilogram of ideal body weight. 2. Increase to 1.2 - 1.5 gm/kg for patients with depleted protein stores (decubitus, draining wounds, fractures, etc.). <p><u>Fluid Requirement</u></p> <p>Based on actual body weight:</p> <p>Over 55 years with no major cardiac or renal diseases: (NOTE: 2.2 lbs. equals 1 kg of body weight)</p>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE																							
F196 (cont'd)			<p>Example: 120 lbs/2.2 lbs. = 54.5 kg (55 kgs) 55 kg x 30 cc = 1,650 cc/day</p> <p>Note: Isotonic Standard Tube Feeding = Approximately 80% water.</p> <p><u>Amputation % of Body Weight</u></p> <table><tr><td>Leg</td><td>20%</td></tr><tr><td>Below Knees</td><td>10%</td></tr><tr><td>Arm</td><td>6%</td></tr><tr><td>At Elbow</td><td>3.6%</td></tr></table> <p><u>Suggested Standards for Evaluating Significance of Weight Loss</u></p> <p>% of body weight loss</p> <table><tr><td>Inter- val</td><td>Significant Loss</td><td>Severe Loss</td></tr><tr><td>1 week</td><td>1-2%</td><td>2%</td></tr><tr><td>1 month</td><td>5%</td><td>5%</td></tr><tr><td>3 months</td><td>7 1/2%</td><td>7 1/2%</td></tr><tr><td>6 months</td><td>10%</td><td>10%</td></tr></table> <p>From Blackburn, et al: "Nu- tritional and Metabolic Assessment of the Hospital- ized Patient: JPEN vol. 1, 1977.</p>	Leg	20%	Below Knees	10%	Arm	6%	At Elbow	3.6%	Inter- val	Significant Loss	Severe Loss	1 week	1-2%	2%	1 month	5%	5%	3 months	7 1/2%	7 1/2%	6 months	10%	10%		
Leg	20%																											
Below Knees	10%																											
Arm	6%																											
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Inter- val	Significant Loss	Severe Loss																										
1 week	1-2%	2%																										
1 month	5%	5%																										
3 months	7 1/2%	7 1/2%																										
6 months	10%	10%																										

LONG TERM CARE SURVEY

LONG TERM CARE SURVEY					
SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F196 (cont'd)			<div>Lab Indices for Visceral Proteins</div> <div><div>Mild Deficiency</div><div>3.5-3.2</div><div>1800-1500</div><div>200-180</div></div> <div><div>Albumin g/dl</div><div>Total Lymphocyte Count (cu/mm)</div><div>Transferrin (If Available)</div></div> <div><div>Moderate Deficiency</div><div>3.2-2.8</div><div>1500-900</div><div>180-160</div></div> <div><div>Severe Deficiency</div><div>2.8</div><div>900</div><div>160</div></div>		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
B. Therapeutic Diets	System for the provision of diets:	Ask Staff:	Review:		Nursing Services 405.1124 405.1124(c) (d.) Patient care plan (f.) Supervision of patient nutrition
F197 SNF 405.1125(c)	o Dietetic service Kardex or file	o Number, type of therapeutic diets?	- Physician diet orders in medical record		
	o Therapeutic menus	o Time of nourishment activity, who's responsible?	- Nurses' Kardex		
	o Nourishment preparation and service	o Nourishment provided for day of survey?	- Dietary Kardex		
F198 ICF 442.332(b)(1)(2)	o Adequacy of nourishment		- Therapeutic diet menu		
	o Individual menus or diet cards		- Diet cards		
F199	SPECIAL FEEDINGS: The surveyor should also attempt to observe that:	The surveyor should interview staff regarding their knowledge of the feeding schedule and training in administering tube feedings. Some residents having difficulty in speaking or swallowing with the tube in place (i.e., poor toleration). The surveyor should inquire if mouth feeding was attempted.	Note: - Consider appropriateness of special diet-updated and reviewed since admission. - Progress notes reflect reevaluation of resident's progress on diet.	On Pureed diets: o Ordered by physician o Prepared fresh daily o Same calories and/or food groups as if served whole. Pureed foods are coordinated with general/regular menu.	
F182	o Staff use proper technique in administering feedings and medications. Check to see that staff checks for location of tube before feeding and that tubing is irrigated before and after addition of medication. o Unused milk-based tube feeding should be discarded in a timely manner	Ask Resident: If the resident is able to be interviewed, suggested questions may be: 1. How long have you been fed by this tube? 2. When was the last time you tried to eat by mouth? What happened? 3. How often do you receive the feeding? Is this consistent?	Selected number of residents on therapeutic diets should be considered for in-depth reviews. Tube Feeding Review: - Plan of Care - Identify frequency, amt. of feeding based on the physician's order and the time span over which each feeding is accomplished. - Medication and treatment records - Fluid intake records - Number of calories as	o Has the feeding been ordered by physician? o Is tube feeding nutritionally adequate? o Have attempts been made to progress tube feeding if indicated? o Have changes in resident condition been noted and addressed.	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F197-199 (cont'd)		<p>4. Does the staff help you in feeding? Do you feel comfortable/safe with all the staff who perform the feeding? If not, what happens?</p> <p>5. Are you losing or gaining weight? What is your goal?</p> <p>6. How often is the tube changed? Who does this? Do you feel comfortable/safe with all staff who perform this procedure?</p> <p><u>Interview staff regarding knowledge of diabetic diets.</u></p> <ul style="list-style-type: none"> o What nourishment does the diabetic patient receive? o If diabetic patient refuses the meal, what is done to supplement the meal? <p><u>If resident is able to be interviewed, suggested questions:</u></p> <ol style="list-style-type: none"> 1. How long have you been on your diabetic diet? 2. Do you know some of foods you must avoid? What are they? 	<p>well as amount of additional water</p> <ul style="list-style-type: none"> - Periodic reassessment of ability to swallow - Record should indicate measures taken to prevent diarrhea and constipation and to treat if they have developed. 	<p>weight loss, constipation, diarrhea, skin condition)?</p> <ul style="list-style-type: none"> o Have observed problems been coordinated with other departments and resolved? o Is feeding being monitored to ensure that feeding is occurring at the ordered/appropriate rate? o Varied nourishments as preferences allow? <p>On Diabetic Diets and Other Therapeutic Diets</p> <ul style="list-style-type: none"> o Ordered by Physician o Varied, nutritionally adequate o Individualized to suit resident o Re-evaluation indicates diet meets objectives. If not appropriate, documentation is provided o Laboratory results support diagnosis o Between meals nourishment provided as needed and recorded in measurable amounts. 	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F197-199 (cont'd) F198 Therapeutic diets prescribed by the attending physician	Observe tray/meal service: o Low sodium diets are palatable (taste) o Sugar sources on diabetic diet trays o Salt sources on sodium restricted diet trays.	3. Do you receive a nourishment between meals or before going to bed?			
F199 Therapeutic menus are planned in writing, prepared and served as ordered with supervision from the dietitian and advice from the physician whenever necessary.	Functioning system to provide the needed nutrients: - Resident's general appearance + Meal service + Food acceptance + Adherence to food preferences - Food supplement + Type to support + Method of service + Assistance provided + Timely provision as ordered - Portion sizes - Conforms to physicians orders	FOR THE RESIDENT WITH DECUBITUS ULCERS Ask Staff: 1. Regarding knowledge of dietary needs. 2. What do you do when this resident refuses milk, meats, bread, etc.? 3. What nourishments are provided to this resident? How often? 4. What happens when a weight loss is noticed with this resident? Ask Resident: 1. Has anyone talked with you about the importance of eating your meals? 2. Do you get foods that you don't eat on your tray? 3. When do you feel hungry? 4. Do you get between meal nourishments?	1. Identify residents with conditions that immobilize or prevent voluntary body movement. 2. Identify location, number, size and depth of decubitus ulcers. 3. Calculations of kilocaloric and protein levels as needed. 4. Micronutrient need assessment and recommendation. 5. Progress notes + monitor weight + monitor healing of decubitus ulcers. 6. Pertinent Laboratory Data + Hemoglobin/Hematocrit + Serum Albumin + Total Lymphocyte Count 7. Fluid Intake + sufficient to maintain hydration	A system is in place to provide the type and amount of nutritional support needed by the residents who have developed decubitus ulcers. Food and supplementation are provided in a method to ensure intake of nutrients needed by residents with decubitus ulcers. Nutritional intervention is assessed and reassessed to ensure appropriate intervention for acceptable health care outcome.	Nursing Service 405.1124 (d) Patient Care Plan (f) Supervision of Patient Nutrition

LONG TERM CARE SURVEY

OBSERVATION

SURVEY AREA

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F197-199 (cont'd)</p> <p>F198 Therapeutic diets prescribed by the attending physician</p> <p>F199 Therapeutic menus are planned in writing, prepared and served as ordered with supervision from the dietitian and advice from the physician whenever necessary.</p>	<p>RENAL REVIEW</p> <p>System in place for the correct provision of renal diets.</p> <ul style="list-style-type: none"> - Individualized menu - Dietary Staff <p>Utilize menu when serving diets.</p>	<p>Interview Staff regarding knowledge of renal diets:</p> <ol style="list-style-type: none"> 1. What foods should be restricted when a patient has kidney problems? 2. What nourishments are given to these patients? 3. Are fluids restricted? <p>Ask Resident:</p> <ol style="list-style-type: none"> 1. Are you on a special diet? 2. What foods must you avoid? 3. Do you feel hungry? 4. Do you eat everything at mealtimes? 5. Are the foods the kitchen sends you the correct ones for your diet? 6. Has the dietitian explained your diet to you? 	<p>Renal Patient Diet Review</p> <ul style="list-style-type: none"> - Pertinent Laboratory Data <ul style="list-style-type: none"> + Serum Sodium + BUN + Serum Potassium + Albumin + Hematocrit + Creatinine - Pertinent Medications <ul style="list-style-type: none"> + Vitamin/Mineral + Supplements - Weight gains/losses 	<p>On Renal Diets</p> <ul style="list-style-type: none"> - Ordered by physician - Written menu nutritionally complete in so far as medically possible, including calories - Individualized to suit resident - Laboratory testing as needed - Coordination with dialysis unit to determine effectiveness of diet 	<p>Nursing Service</p> <p>405.1124</p> <p>(d) Patient Care Plan</p> <p>(f) Supervision of Patient Nutrition</p>

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>C. Preparation</p> <p>F204 SNF 405.1125(e)</p> <p>F205</p> <p>1. Food is prepared by methods that conserve its nutritive value and flavor.</p> <p>F206</p> <p>2. Meals are palatable, served at proper temperatures. They are cut, ground, chopped, pureed or in a form which meets individual resident needs.</p> <p>F207</p> <p>3. If a resident refuses food served, appropriate substitutes of similar nutritive value are offered.</p>	<p>Observe:</p> <ul style="list-style-type: none"> o Feeding assistance is provided or not provided by staff o Length of time residents sit and wait for meal service o Food is served soon after cooking or refrigerated o Trays are free of spillage of foods or liquids o Foods are appropriately covered and kept at a proper temperature o Cooking and service utensils are clean, sanitary and greaseless o Refrigerated foods must be covered o Leftover and pre-cooked foods must be dated and labeled o All cooked food stored above raw meats in refrigerator o Temperature gauge on or in refrigerator to record temperature o Shelving to allow air circulation o Food not stored in refrigerator must be stored off the floor (This is applicable to food stored in walk-in refrigerator and freezer.) 		<p>Review:</p> <ul style="list-style-type: none"> o Plan of Care o Progress notes o Notes from other professional disciplines to determine rehabilitation potential to self feed, use of assistance devices. o Record of food substitution to determine alternate choice provided o Standardized recipes 	<p>The facility has kitchen and dietetic service areas adequate to meet the food service needs. These areas are properly ventilated, arranged, and equipped for sanitary refrigeration, storage, and preparation of food. Equipment and storage areas are clean, well maintained, within proper temperatures ranges, and safe</p> <p>Proper temperatures: (Fahrenheit)</p> <p>Frozen food storage -- 0 or below</p> <p>Cold food storage -- 40-45 degrees</p> <p>Hot food holding equipment -- 140 degrees minimum</p> <p>Dishwasher wash cycle -- 150 - 160 degrees</p> <p>Dishwasher rinse cycle -- 160-180 degrees or a color change in thermopaper; or adherence to manufacturers recommendations</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F207 (Cont'd)</p> <p>INTENT</p> <p>To provide foods that are safe and nutritious</p> <p>SNF 495.1125(e)</p>	<ul style="list-style-type: none"> - No rust on shelves - No dripping or spillage on shelves and floors - Degree to which diet modification is commensurate with residents tolerance and capability - Residents for meal satisfaction - Observe appearance of food color, texture, aroma, and flavor - Less than 75% of meal is consumed - Type of substitutions provided 		<ul style="list-style-type: none"> - Progress notes - Diet card - Day's menu substitute record 	<p>Dietary personnel are clean and free of infectious disease. They practice acceptable techniques and procedures to keep foods at proper temperatures and protected against contamination.</p> <p>Is dietary information pertinent to dietary modification?</p> <p>Has resident been assessed for eating program to maintain independence?</p> <p>The food substitute is of similar nutritive value as the refused item (e.g., milk refused, alternate of calcium rich food should be provided.</p>	

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Frequency F208 SNF 405.1124(d)	o Menus as under A on page 63 o Who serves nourishments o Nourishment list and schedule	Interview various residents about the nourishment service: o Are nourishments offered routinely? o At what time are they offered? o By whom? o What kind of nourishments are offered?	<u>Review</u> o Menu as under A o Nourishment List	Three meals or their equivalent are served daily with not more than a 14-hour span between the evening meal and breakfast. The nourishment service is more difficult to evaluate: must find evidence that patients are offered nourishments on a planned basis and documented.	
F209 ICF 442.331(a)					
F210 1. At least three meals are served daily at regular hours with not more than a 14-hour span between a substantial evening meal and breakfast.					
F211 2. To the extent medically possible, bedtime nourishments are offered to all residents					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
E. Staffing F212 SNF 405.1125 (a)	<ul style="list-style-type: none"> - Food service personnel are on duty for all defined dietary responsibilities: <ul style="list-style-type: none"> - Supervision - Food Preparation - Dishwashing - Cleaning - Duty Schedules 	<ul style="list-style-type: none"> - Interview personnel to verify that they are aware of their responsibilities and job descriptions. 		<ul style="list-style-type: none"> - From an assessment of the total dietetic service operation: + The dietetic supervisor is capable of the overall management and supervision of the dietetic service. + There are dietetic personnel on duty over a 12-hour period who demonstrate ability to perform tasks adequately. + Dietetic personnel receive appropriate orientation and training consistent with their duties and responsibilities. There is evidence that the dietetic staff are knowledgeable about food service policies and procedures and apply these accepted professional practices in their daily work. + Services provided are consistent with the size, scope and facilities available. 	
F213 1. Food service personnel are on duty daily over a period of 12 or more hours. <u>Intent</u> Persons are providing services commensurate with their level of training; and at the level of sophistication needed by the residents.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
SPECIALIZED REHABILITATIVE SERVICES F214 SNF 405.1126 F215 SNF 405.1126(b) F216 ICF 442.343	OBSERVE RESIDENTS As per "Restorative Nursing Activities of Daily Living" SNF 405.1124(e)(2)(b) ALSO: OBSERVE RESIDENTS IN THERAPY AREAS: - Is privacy provided during treatment, as applicable (e.g., cubicle curtains, room dividers, one to one area)? - Is there appropriate, courteous resident/staff interaction? - Are therapy areas appropriate to treatment given (e.g., small, quiet area for speech/language/hearing test and sessions, large for P.T., exercise and therapy groups, O.T. perceptual testing/splinting, A.D.L. adaptations area, as applicable)? - Is equipment clean and in good working condition? Is it operating as per manufacturer instructions (e.g., hydrocollator temp., paraffin, whirlpool, etc.)?	ASK RESIDENT: (or ask staff, if resident has severe communication problem): - Are you receiving any kind of therapy? P.T.? O.P.? Speech? - What kinds of therapist(s) are working with you on your swallowing problem? - What kinds of therapists have instructed you on how to improve your swallowing? - How do the methods to improve swallowing help you? - How often do you see the therapist? - What happens if the therapist is absent for scheduled treatments? - Where do you receive your therapy? - How long have you been receiving therapy? - Do other staff members assist with therapy? Who and in what way? - Are you in a comfortable environment (room temperature, privacy, etc.)? - Do you have input into developing or revising your therapy treatments? - What things did you do immediately before entering this facility, that you are unable to do now? ASK THERAPY STAFF: - How many days/hours per week do you provide therapy? - Do you participate in the development of the resident's overall plan of care? In what way? - Do you utilize P.T.	REVIEW: - Plan of care - Doctors' orders - Nursing assessment and progress notes - Aide assignment sheets - Therapy assessments/evaluations (includes a minimum of): + name, age, date, diagnoses + referring physician and reason for referral + history, precautions, limitations + objective documentation (e.g., tests, measurements) + rehabilitation potential - Treatment plan (includes a minimum of): + specific rehabilitation needs and objectives + treatment to meet specific measurable rehabilitative goals + Type, amount, frequency, duration, modalities + name of therapist(s) who will provide treatment + restorative nursing follow-thru (recommendations for plan of care)	- Are rehabilitation services integrated with restorative nursing? - Do therapists participate in development of resident plan of care? - Do observations and interviews indicate that services are provided in conjunction with 24 hour nursing, and in accordance with the overall plan of care regarding restorative nursing and specialized rehabilitation services?	<u>Nursing Services</u> 405.1124 442.338 442.319 442.341 <u>Physician Services</u> 405.1123 442.346 <u>Medical Records</u> 405.1132 442.318 <u>Activities Program</u> 405.1131 442.345 <u>Resident Rights</u> 405.1121(k) 442.311 <u>Training</u> 405.1121(h) 442.311 <u>Infection Control</u> 405.1135 442.315 442.327 442.328

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F218 (cont'd) professional practices by qualified therapists or qualified assistants. C. PROGRESS ICF 442.343(f)	<ul style="list-style-type: none"> - Are assistive devices being provided as needed? - Do assistive devices fit well, function and are used properly (e.g., wheelchairs, crutches, braces, glasses, hearing aids, canes, artificial limbs assistive eating devices)? - Is staff responsive to resident expressions of discomfort? - How are the prescribed treatments and training meeting the needs of the resident? - Are parallel bars sturdy and well secured to floor? Are systems designed for weight lifting sturdy and well secured; if attached to wall with rigging and hand grips in good conditions? - Are nonverbal residents provided with means of communication (e.g., writing tablets and utensils, picture cards)? - Are visually impaired residents provided with 	<p>"aides" In what way (if interviewed the registered physical therapist)?</p> <ul style="list-style-type: none"> - How do you assure carry-over of therapeutics in your absence? - How often do you provide inservice to staff? - What topics are covered? Do you have opportunities to attend inservices? - How do you communicate patient progress/regression, etc. with physician, nursing personnel, family, other disciplines? - How many residents currently are receiving P.T., O.T., Speech-language pathology and audiology therapy (SLP/AT)? - Do you utilize the services of a certified occupational/therapy assistant (if interviewing the registered occupational therapist)? - If so, in what way? - Is space available for the conduction of your therapy? - Is equipment readily available to meet resident needs? - Is there a coordinated interdisciplinary 	<ul style="list-style-type: none"> + identifies modalities that will be delegated to non-skill staff - Progress notes indicate that plan of rehabilitation care has been re-evaluated by the physician and therapist as necessary but at least every 30 days. - Communication with physician: + 2 week progress after initiation + monthly progress + discharge summary - Treatment documentation: + frequency + summary 		Physical Environment 405.1134 442.324 442.325 442.326 442.328 442.329 442.330 Dietetic Services 405.1125(e) 442.329 442.331(c)
F219 1. A report of the resident's progress is communicated to the attending physician within 2 weeks of the initiation of specialized rehabilitative services. EXCEPTION: ICF resident's progress must be reviewed regularly.					

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	<p>magnifiers and large print books?</p> <p>- Is equipment such as whirlpool cleaned between patients?</p>	<p>approach toward rehabilitation of the geriatric resident evident in your facility? In what way do you see this?</p>			
<p>F220</p> <p>2. The resident's progress is thereafter reviewed regularly and the plan of rehabilitative care is re-evaluated as necessary. But at least every 30 days by the physician and therapist.</p>					
<p>EXCEPTION</p> <p>ICF resident's plan must be revised as necessary</p> <p>ININT</p> <p>Therapy services are provided that will assist the resident to attain his/her optimal level of function.</p>					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Pharmaceutical Services F221 SNF 405.1127	<ul style="list-style-type: none"> - Observe residents for excess sedation or adverse effects: <ul style="list-style-type: none"> + drooling + shuffling gait + involuntary movements of limbs, tongue, facial muscles + loss of affect + drowsiness + postural abnormalities + pill rolling movement - Observe for depression agitation 	<p>Ask Resident:</p> <ul style="list-style-type: none"> - Are you aware of the medications you are taking—use, frequency, contraindications? - Has your physician discussed the medications you are taking, with you? - How many medications are you taking? - How do you feel the medication helps you? - How do medications bother you? (e.g., make you feel nauseated or dizzy) - Have you told anyone about this? <p>Ask Staff:</p> <ul style="list-style-type: none"> - How often does the pharmacist review the resident's medications? - To whom does he report any irregularities? - When the pharmacist reports irregularities, what is done about it? - To whom do you report any problems about medication? - Do you feel the residents are receiving the proper medications, amount and kind? - Is the pharmacist available to you for consultation? 	<ul style="list-style-type: none"> - Review medical record: <ul style="list-style-type: none"> - to see if pharmacist or nurse has reviewed a drug regimen on a monthly basis. - for evidence that the reviewer has reported irregularities to the physician or other who has authority to correct the irregularities for evidence that the irregularities have been evaluated. - review nurses notes, progress notes, care plan, etc. for any adverse reaction to medication and indication that corrective action was taken. - screen the drug therapy of the residents included in the sample using the indicators (forms if prepared) outlined in SOM Appendix N Transmittal #174. - review pharmacists drug regimen monthly reports to determine if pharmacist has commented on potential irregularities, screened out through this process (need full year). 	<p>Reviews were performed in the facility. There was evidence of a review performed on every resident whose record was reviewed in depth. In records reviewed, the average prescription utilization was not substantially over 6.1. If it is, review for appropriateness. Apparent irregularities were identified and reported.</p> <ul style="list-style-type: none"> * Refer to SOM Appendix N in 174 for further information on drug regimen review. 	<p>Physicians Services 405.1123(b) 442.346</p> <p>Nursing Services 405.1124 442.338</p>
F222 A. Supervision F223 ICF 442.336(a)(b)					
F224 SNF 405.1127(a) The pharmacist reviews the drug regimen of each resident at least monthly & reports any irregularities to the medical director and administrator.					
A registered nurse may be utilized to perform this monthly review for ICF residents. Also the attending or staff physician must review medication quarterly.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F224 (cont'd)		- Where does the pharmacist perform his drug regimen review?			
B. Labeling of Drugs and Biologicals	Observe labels of medications for residents observed on drug pass tour for:				
F225 SNF 405.1127(c)	- name of drug - dosage form - strength of drug - quantity of drug - expiration date - presence of a control number - appropriate accessory or cautionary statement				
F226 ICF 442.333					
F227 The labeling of drugs and biologicals is based on currently accepted professional principles and includes the appropriate accessory and cautionary instructions as well as an expiration date when applicable.					
INIENI					
To assure that residents receive medications as ordered and that they are monitored for possible side effects.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Laboratory and Radiological Services	Observe symptoms of targeted residents, e.g., drainage, odors, jaundice, fevers, edema, etc.	Ask Nursing/Rehabilitative Staff: - What do you do when you think a resident needs laboratory work done - blood work, cultures, etc.? - How long does it take to get lab results back? - What do you do with the results when they do come back? - Do you have any problems with your laboratory services? - How are lab specimens stored? - Do you have any instruction from the lab regarding collection and storage of specimens?	Review the physician's order sheet to see if: - orders for lab services are signed - that there are orders for tests that have been done. Nursing progress notes are reviewed for documentation of physician notification of lab results. Physician progress notes or other documentation indicating that the physician is aware of lab results. There are lab reports on the medical record for all tests ordered (except if just performed).	There must be signed physician orders for all lab/radiology services performed. Record results of all testing in the medical record. There is documentation in nursing or physician notes to indicate the results of lab tests were promptly communicated to the physician. When lab tests are performed the resident should be informed of significant findings and the possible therapeutic alternatives.	Nursing Services 405.1124(a)(b)(c) 442.343 Physician Services 405.1123(b)
F228 SNF 405.1128					
F229 SNF 405.1128 (a)					
A. Provision of Services					
F230					
1. All services are provided only on the orders of a physician.					
F231					
2. The attending physician is notified promptly of findings.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
<p>F232</p> <p>3. Signed and dated reports of a clinical laboratory, x-ray and other diagnostic services are filled with the patient's medical record.</p> <p>INTENT</p> <p>To assure that lab tests are performed as ordered and findings are reported to physicians are made aware of symptoms that may require lab tests.</p>					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Social Services F233 SNF 405.1130 F234 SNF 405.1130(a) F235 ICF 442.344(d) A. Plan F236 The medically related social and emotional needs of the residents are identified. B. Provision of Services	Observe resident for: - level of alertness - behavior exhibited (disoriented, confused, uncooperative, disruptive, aggressive, anxious, withdrawn, isolated, lonely). - personal appearance - apparent disabilities - apparent vision and/or hearing problems they exhibit as you talk to them - interaction to staff, other residents, family, visitors - participation in group activities - independence in activities, decision making - Therapeutic staff intervention: constructive reaction to resident's behavior - resident's participation on policy making bodies and committees of facility, e.g., resident councils.	- How long have you been in the facility? - Can you explain to me why you are here? - Have you had any problem adjusting to the facility i.e., loss of independence? - Have you had any other problems? - Has staff been helpful, e.g., financial? - Do you have any family or any other visitors? - Do they have any problems with which this facility has not been helpful? - If exhibiting disruptive depressed, agitated, anxious, etc. behavior- I noticed that you are upset (quiet, nervous, unhappy) today. Can you tell me what has bothered you? - Does staff respond to your suggestions about your own care? - Did you participate in planning what care you will get and who will give it to you? - Do you make use of the dining, activity, community room, and/or outdoor area?	Review medical records of residents selected for in-depth review to determine that: - Assessment and plan of care identifies residents medically related social and emotional needs and/or problems. - Resident's family and home situation, information related to medical and nursing requirements, and community resources are considered in making decisions regarding the residents care. - Medical records contain current specific information signed and dated which highlights the social and emotional needs of the resident and significant findings and actions are entered promptly in the medical record. - Social service notes address the following, if applicable: + losses due to aging and relationship with staff and other residents + mental status + behavior problems + adjustment to the facility + illness	The residents social and emotional needs are identified. The plan of care addresses those needs. The plan of care is being followed, reviewed and revised as necessary. The family's needs and concerns are addressed if applicable. There is referral to appropriate agencies if necessary. Sufficient space is provided for private meetings and discussions. While it is not a program requirement a social worker or other staff may contribute to the resident's care plans by indicating personal strengths that can be used to build upon.	<u>Nursing Services</u> SNF 405.1124 ICF 442.338 <u>Activities</u> SNF 405.1131 ICF 442.345(a)(c)(d) <u>Physicians Services</u> SNF 405.1123(b) ICF 442.346 <u>Patient Care Management</u> SNF 1124(d) ICF 442.346 <u>Physical Environment</u> SNF 405.1130(b) ICF 442.344(c)
F237 1. Services are provided to meet the social and emotional needs by the facility or by referral to an appropriate social agency.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F233-238 (cont'd)		<ul style="list-style-type: none"> - Can you tell me about your life here? What do you do in a usual day? - Are things like getting up, bathing, dressing, eating, done at the same time for everyone? - If you could change some things about living here, what would you change? 	<ul style="list-style-type: none"> - Plan of care, social service notes, reflect the current status of the resident. - There is evidence that the residents mental status has been considered when plan of care was developed. - Vision and hearing problems have been addressed. - Plan of care addresses residents needs as observed by the surveyor and stated by the resident. - Notes and plan indicate that needs have been re-evaluated and care plan changed as necessary. - There is evidence that the problems and needs of the family have been addressed. - There are indications that a referral has been made to the appropriate agency and a statement describing why. - There is documentation from the outside agency indicating what actions were taken and any plan for follow-up. 		
F238	2. If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency.	<p>Ask Social Worker/Nurse</p> <ul style="list-style-type: none"> -When the social worker is readily available, delete "ask the nurse". -How often is the resident seen by a social worker?" - Who is responsible for identifying the resident's: <ul style="list-style-type: none"> + social and emotional needs + family and home situation + problems and needs + financial needs - How are needs identified and reported? - Does resident participate in the development of his/her care plan? - Ask nursing how often the social worker sees resident. - Does the social worker discuss residents needs/problems with nursing staff if there is a need for nursing to be involved? 			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F233-238 (cont'd)		<ul style="list-style-type: none"> - How is physician notified and involved in plan of care? - Ask social service staff their role, function, and what services they provide. - Ask staff what referral services are available. - If services are being provided by outside resource, are resources documented work service? - Ask social service staff about their background and education. - If there is a consultant ask staff: <ul style="list-style-type: none"> + How often does the person come? + How long do they stay? + What does the person do while in the facility? + What assistance, consultation is being provided? + Ask social service staff if adequate space is provided for them by the facility to conduct private interviews and meetings. 	<ul style="list-style-type: none"> - The time period between date of referral and date of services is reasonable and if not, there is evidence of follow-thru by staff. - The outside agency has documented their involvement and activities. - Plan of care demonstrates awareness of behavior, articulates the reasons for it, and indicates in the plan of care an approach to the behavior. - Assessment should contain: <ul style="list-style-type: none"> + a flexible approach to each resident (should be individualized). + awareness of a mental status evaluation. + resident history. + family availability for planning, resident support, etc. + identification of problems resulting from placement. + recent social adjustment. + discharge planning. - The record reflects 	<ul style="list-style-type: none"> - There is documentation of collaboration between nursing and social work for meeting emotional needs. 	Patient Care Management 405.1124(d)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F233-238 (cont'd)			<p>Social Service intervention with family and resident, i.e., grief and bereavement counseling.</p> <ul style="list-style-type: none"> - Review integrated plan of care for: + Plan for concerted social services. + Plan for supportive services for adjustment. - Adjustment goals. - Interventions for specific conditions. 		
Activities					
F239 SNF 405.1131	General level of activities throughout the facility, as well as in specifically designated areas.	<ul style="list-style-type: none"> - How does he/she spend the day? - Of the activities resident has during the week, what does he/she enjoy most/least? - If has none, why? - Has staff asked about his/her interests? 	Activities Assessment Interests of the resident (past and present) are identified as to resident's current capabilities and necessary adaptations to pursue their interests.	Are each resident's personal interests known? If not, what actions are being taken to identify them? Residents in facility 60 days should not be without some identified interests.	Nursing Services 405.1124 442.319
F240 SNF 405.1131(b)	How many residents are lying on their beds or sitting in chairs staring at the walls during waking hours?	Suggested specific activities or people to get acquainted with in response to interests?	Documentation that information about social history, medical problems and limitations impacting residents' activities have been communicated to activities personnel and used in assessment and development of activities portion of care plan.		Social Services 405.1130 442.344
F241 ICF 442.345	What is the level of residents interest in activities they are doing?	What organized activities has he/she participated in this past week?		Are each resident's needs identified? If not, what actions are being taken to identify them?	Special Rehabilitative Services 405.1126 442.363
F242	Are residents positioned correctly for activity?	How does resident find out about upcoming programs or happenings?		Have medical contraindications been identified in the care plans?	Physician Services 405.1123 442.329
1. An ongoing program of meaningful activities is provided based on identified needs and				Needs and contraindications of residents in the facility more than 30 days should be known and/or have a plan of action.	

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F242-(cont'd) interests of each resident. It is designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any.	Are needed personal equipment (e.g., splints, glasses) and adaptations for limitations and safety (e.g., cardholder, goggles, footrests) used in activities?	<ul style="list-style-type: none"> - Does resident get out of facility to activities? - Does resident have problems getting to activities? If so, does the staff assist? - Does the staff encourage residents to go to activities? - Does resident participate in Resident Council? - Does resident have free choice of activities? - What kind of activities do bedfast residents engage in? <p>Ask Resident:</p> <ul style="list-style-type: none"> - Have you ever had difficulty in having private visits? Give examples. 	<ul style="list-style-type: none"> - Needs of the resident in the following areas are identified: <ul style="list-style-type: none"> + social interaction + creative expression + work and service opportunities + intellectual stimulation or activities adaptation + physical exercise + spiritual or religious expression - Plan of care - Used all available information about: <ul style="list-style-type: none"> + interests + needs + indications and contraindications for activities from other assessments + physician orders and progress notes 	Does each resident's activities promote his physical, social and mental well-being?	<p>Physical Environment 405.1134 442.329</p> <p>Infection Control 405.1135 442.328</p> <p>Resident Rights 405.1121(k) 405.311</p> <p>Medical Records 405.1132 405.318</p> <p>Patient Care Management 405.1124(d) 442.341</p>
F243 2. Unless contraindicated by the attending physician, all residents are encouraged to participate in activities.					
F244 3. The activities promote the physical, social and mental well-being of the residents.					

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F245 4. Equipment is maintained in good working order.	Is lighting adequate throughout the facility for activities in which residents are engaged?	Ask Nursing/Activity Staff - Do they know the interests of residents under their care? TV programs they like? Activities they want to participate in today/this week?	Activities notes spell out implementation of plan, resident's reactions to specific activities, approaches, and people.	Are equipment and supplies to meet residents' interests available and maintained in good working order?	
F246 5. Supplies and equipment for activities of interest are available.	Do men and women have activities of interest to them?	- Do they know the personal equipment needed (e.g., glasses, hearing aids, reader)? - Do they know the adaptive equipment used by residents for specific activities (e.g., talking books, built up tools)?	Residents' participation in individual and group self-started and organized structured and unstructured activities timespent.	Are residents evaluated periodically with emphasis on participation levels and desire for new activities?	
INTENI Each resident has individual and/or group activities to meet activities needs through his interests daily.	Are methods of communicating upcoming activities appropriate to the resident populations? Specific observation for physically impaired/alert residents: Activities adapted to meet specific needs of the resident. Alert residents have activities of interest and at their cognitive functional level. Specific observations for confused/disoriented, emotionally disturbed and mentally retarded residents: There are current calendars, clocks and patients	- Do they talk to residents to identify new interests and report these and "dislikes" to activities personnel? How? - What is staff's involvement with individual and group activities of residents in their care? - How do they determine interests of residents who have difficulty communicating? - What activities does resident participate in regularly? Which activities does he/she enjoy most/least?	Evaluation of plan of care for: changes in interests; changes in precautions, problems, approaches, etc. Plans are revised as needed.	Are plans readjusted if they do not reach desired outcomes? Residents in the facility more than 60 days should have at least two activities per week of interest to them personally.	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F246 (cont'd)	<p>and patients names or symbols visible to all the residents.</p> <p>Staff consistently use techniques such as reality orientation, empathy, and/or validation therapy as per each individual's needs.</p> <p>Resident has familiar items if available in room (e.g., family pictures, artwork, afghan, chair from home).</p> <p>Residents in restraints have activities of interest geared to their abilities when restrained (e.g., table-top activity, music, radio, reading and writing material; when out of restraints (e.g., walks, exercise group, toileting).</p> <p>Small group and one-on-one involvement with staff reinforcing appropriate responses.</p> <p>Staff reaction to resident behavior during activities (e.g., crying, whining, demanding, non-verbal, aggression,</p>	<ul style="list-style-type: none"> - If he/she does not participate, why? - Which activities appear to relax/calme the resident? Excite him/her? - How does staff manage maladaptive behavior (e.g., abusive, disruptive, combative)? - Is direct care staff involved in resident activities? How? When (weekends, evenings)? - Does resident have one-to-one assistance in activities? - How many residents have activities a day of interest to them as individuals? - Why do these residents have so little interest? - What is your plan to find more activities of interest to them that will meet their needs? - What types of residents seem not to be interested in activities? - How many (who) residents have only passive activities? 			

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F 246 (cont'd.)	<p>Loudness).</p> <p><u>Specific observation for comatose or terminally ill resident:</u></p> <ul style="list-style-type: none"> - Appropriate items for sensory enrichment in room (e.g., TV, radio, adequate lighting) - Resident placed in supportive living environment (e.g., around people, in hall, activities room, sunshine, fresh air), when appropriate to the resident needs and consistent with the resident's choice. <p><u>Specific observation of environment for conducting activity program:</u></p> <ul style="list-style-type: none"> - Adequate lighting. - Functional area is appropriate for activities of interest (e.g., religious services, arts and crafts, cooking, reading, TV watching, card playing, parties, discussion groups, gardening). 	<ul style="list-style-type: none"> - How do you adapt activities for needs of residents who are: <ul style="list-style-type: none"> - confused/disoriented - emotionally disturbed - mentally retarded - physically impaired but alert - terminally ill? - Are community volunteers utilized in the activities program? In what way? - Are the residents encouraged to offer suggestions for new activities? If so, what activities have been instituted as a result? - How they manage maladaptive behavior (e.g., abusive, disruptive, combative)? - How do they help depressed residents (e.g., tearful, emotionally labile)? 		<p>Resident may refuse to participate in activity. However if the activities are part of a diagnostic or therapeutic program, the resident is responsible for assisting in the selection of mutually acceptable alternative activities.</p>	

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INTERVIEWING

RECORD REVIEW

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F246 (cont'd)	<ul style="list-style-type: none"> - Multi-purpose room use and timing of activities does not conflict. - Outdoor activity area. - Functional furniture, indoors and outdoors. - Evidence of free choice activities: <ul style="list-style-type: none"> - newspapers - magazines - record player - radios - games - TV's - reading - sewing - personal visits - church services - Activities, equipment and supplies are appropriate and sufficient to meet interest of residents. - Activities equipment and supplies sufficient for conducting activities. - Activities equipment clean, safe, and in working order. - Residents rooms contain independent project materials, as appropriate. - Residents have access to the total activity environment (e.g., lobby, sunroom, day-room, porch, dining room). 				

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
MEDICAL RECORDS					
F247 SNF 405.1132					
Content					
F248 SNF 405.1132(c)					
F249 ICF 442.318(a)(c)					
F250 1. The medical record contains sufficient information to identify the resident clearly to justify diagnoses and treatment and to document results accurately.				All information required is present in the record. Does the record document all observable resident needs/problems?	
F251 2. The medical record contains the following information.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F251 (cont'd) a. Identification information.					
F252 b. Admission data including past medical social history.					
F253 c. Transfer form, discharge summary from any transferring facility.					
F254 d. Report of resident's attending physician.					
F255 e. Report of physical examinations.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F256 f. Reports of physicians' periodic evaluations and progress notes.					
F257 g. Diagnostic reports and therapeutic orders.					
F258 h. Reports of treatments.					
F259 i. Medications administered.					
F260 j. An overall plan of care setting forth goals to be accomplished through each service's designated activities, therapies and treatments.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F261 k. Assessments and goals of each service's plan of care.					
F262 l. Treatments and services rendered.					
F263 m. Progress notes.					
F264 n. All symptoms and other indications of illness or injury including date, time and action taken regarding each problem.					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F264 (cont'd) INTEI Brings together all resident information. Reflects the care being given to the residents and helps all care givers to make decisions on care needed.					
TRANSFER AGREEMENT					
F265 SNF 405.1133		Ask Staff: - What is the routine information you provide to a new facility when you transfer a resident? - Who provides this?	Review information on medical record of resident who was temporarily transferred and is again back in the facility. Look at physician and nursing progress notes of above residents to determine if the timeliness of transfer was consistent with accepted standards of care.	All pertinent resident information must be documented on the medical record at the time of transfer. The resident was not injured in any way by a delay in the transfer process.	Patient Rights 404.1121(k) 442.311
F266 SNF 405.1133(a)					
F267 ICF 442.316					
F268 A. Whenever the physician determines that a transfer is medically appropriate between a			Does facility have an agreement with a hospital? Not required if hospital under same ownership, direction and in same campus.		

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F 268 (cont'd) hospital or a facility providing more specialized care and the nursing facility, admission to the new facility shall be effected in a timely manner.			Is transfer form complete with all data, with appropriate signatures? Does the medical record indicate that adequate and pertinent aspects of the discharge planning portion of the patient care plan accompany the patient on transfer?		
F269 B. Information necessary for providing care and treatment to transferred individuals is provided.					
PHYSICAL ENVIRONMENT					
F270 SNF 405.1134					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F271 A. Nursing Unit SNF 405.1134(d)					Nursing Service 405.1124(g) 442.337
F272 1. Unit properly equipped for preparation and storage of drugs and biologicals.	There is adequate light to prepare medications. There is sufficient space to prepare medications for administration in a safe and effective manner. There is sufficient space for storage of medica- tions. Unit dose carts are protected from tampering and theft. Medications are stored in a locked area. Refrigeration facilities are available for medi- cations. There is sufficient storage space for I.V. fluids. Handwashing facilities are readily accessible either in the medication preparation area or adja- cent to it.	Ask Nursing Staff: - What do you use the med- ication room (area) for? - Where is the handwashing sink? - Do you have enough, con- venient storage area for I.V. fluids and medica- tions needing refrigera- tion. - Where are the keys for the medication room and unit dose carts? - Do you feel you have adequate storage space for supplies and equip- ment? - If no, what problems does that cause? - Does the resident call system function properly? Ask Residents: - Do the call bells in your room and in the toilets and bathing areas always work?		Medication preparation and storage areas provide adequate space and light to prepare medication and to store medication and needed supplies. Light is available when and where the medication cart is in use. A medication refrigerator is available and does not contain patient or employee snacks. Juice, etc., used in adminis- tering medication is allowed. Clean and dirty areas must be separated, pre- ferably in separate rooms. Storage space must be available for bulky items and supplies so that they can be stored without blocking corridors and exits. Medications are protected from unauthorized use. Call bells must be in working order and must be present in all resident bedrooms, toilets and	Infection Control 405.1135 Governing Body 442.325 Resident Rooms 405.1134(e) 442.325
F273 2. Utility and storage rooms are adequate size.					
F274 3. The unit is equipped to register resident calls with a functioning communica- tions system from resident areas includ- ing rooms and toilets and bathing facility.					

SURVEY AREA

OBSERVATION

INTERVIEWING

RECORD REVIEW

EVALUATION FACTORS

CROSS REFERENCE

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F274 (cont'd)	Audible call system is on and working. Long cords are available for chair bound patients.	<ul style="list-style-type: none"> - If no: - How often is it that they do not work? - How long does it take to get them fixed? 		bathing areas. Audible signals, if in the system, must be in working order and turned on.	
B. Dining and activities area	Area is clean and well maintained.	<p>Ask Residents:</p> <ul style="list-style-type: none"> - Is there enough room between tables to allow you to feel safe in getting to your table? - Can you sit comfortably in your wheelchair at the table? - How is the lighting and ventilation level for you? - Are sitting preferences permitted? - Do you go to the dining room for meals? 		Regulations clearly set out conditions for compliance. Refer to the regulations.	<p>Dietetic Services 405.1125 442.331</p> <p>Patient Activities 405.1131 442.345</p>
F275 SNF 405.1134(g) F276 ICF 442.329	There is sufficient space between tables to allow for safe passage of wheelchairs and residents with walkers, canes and other assistive devices.				
F277	<p>1. The facility provides one or more clean, orderly, and appropriately furnished rooms of adequate size, designed for resident dining and resident activities.</p>	<p>Table height or design allows residents in wheelchairs to sit a normal distance from the table.</p> <p>Lighting and ventilation in the dining/activity areas is provided according to recommended standards.</p> <p>A multi-purpose room should not be used for storage of items such as beds, mattresses, boxes, etc.</p>			

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F278 2. Dining and activity rooms are well lighted and ventilated.	Are dining areas utilized at meal service?				
F279 3. Any multi-purpose room used for dining and resident activities has sufficient space to accommodate all activities and prevent their interference with each other.					
F280 SNF 405.1134(e) Indicators C&D apply to SNFs					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
C. Resident Rooms F281 ICF 442.325	Observe rooms and furnishings for maintenance, cleanliness and safety. Look for dust/dirt on lights, high surfaces, under heating units, and in corners. Use a flashlight.	Ask Residents: - Is your room kept clean? Who cleans it? When, and how often? - Is your bed, chair, and other furniture and fixtures kept in good repair? - Do you feel you have enough privacy? - What personal belongings are you allowed to have? - Is the lighting in your room sufficient for you? - Is your chair comfortable? - When do you permit staff to clean your room? - When do you ask staff not to clean your room?		Refer to the regulations.	Resident Rights 405.1121(k)(1)(5) (9)(13) 442.311(a)(d)(2) (g)(1)(2) (6)(k) Physical Environment 405.1134(d)(e) 442.326
F282 1. Single rooms have at least 100 sq. ft.	Are beds, lights, plumbing all in working order?				
F283 2. Multiple resident rooms have no more than 4 residents and at least 80 sq. feet per resident.	Observe for all regulatory requirements as noted to the left. Are privacy curtains present, and appropriate to maintain resident privacy? Test several call lights.				
F284 3. Each room is equipped with or conveniently located near toilet and bathing facilities.	Are call lights within reach, including emergency lights in toilets and bathing areas? Are toilet and bathing facilities appropriate in number, size, and design to meet resident needs? What personal belongings do residents have in their rooms? Is there				

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F285 4. There is a capability of maintaining privacy in each.	sufficient storage and security for their belongings?				
F286 5. There is adequate storage space for each resident.					
F287 6. There is a comfortable and functioning bed and chair, plus a functional cabinet and light.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F288 7. The resident call system functions in resident rooms.					
F289 8. Each room is designed and equipped for adequate nursing care and the comfort and privacy of residents.					
F290 9. Each room is at or above grade level.					
F291 10. Each room has direct access to a corridor and outside exposure.					
Exception: Not required for ICF residents.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Toilet and bath facilities F292 ICF 442.326 F293 1. Facilities are clean, sanitary and free of odors.	Are there adequate numbers of toilets, baths, and showers for the residents that are accessible to, and functional for all residents? Are these conveniently located in or near resident rooms? Check for water on floors of bath and shower rooms. Is privacy provided? Are facilities clean, sanitary and free of unpleasant odors?	Ask Residents: - When was your last bath? The one before? - What safety precautions are used for getting in and out of the bathtub? - What equipment is needed to get in and out of the tub, and how do you feel about it? - How do you get your wheelchair into the toilet or bathroom? - When, if ever, do you refuse to be bathed?	Bathing schedule for patients in your in-depth review.	Privacy is maintained for residents in toilet and bathing areas. Toilet and bathing areas are clean. Water is removed from floors immediately upon completion of bathing. Hot water is within the acceptable temperature range. Soap, toilet paper and towels are available in the bathrooms. Grab bars are present and securely fastened to the wall. Ventilation and lighting systems are correctly functioning. Plumbing and other fixtures are in good condition.	
F294 2. Facilities have safe and comfortable hot water temperatures.					
F295 3. Facilities maintain privacy.	Are bathrooms equipped with soap, toilet tissue, towels, etc.? Hot water is between 110-120 degrees or the acceptable State level. Hot water temperature control must be maintained. Single use, disposable towels should be available for handwashing purposes. Note also condition of grab bars, plumbing and fixtures. Bath areas are not used for storage.				
F296 4. Facilities have grab bars and other safe guards against slipping.					

LONG TERM CARE SURVEY

OBSERVATION

SURVEY AREA

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F297 5. Facilities have fixtures in good condition.					
F298 6. The resident call system functions in toilet and bath facilities.					
E. Social Service Area					
F299 SNF 405.1130(b) ICF 442.344	Does the social worker have a locked file available? Where are social service interviews and clerical functions performed? Are rooms in areas easily accessible to residents?	Ask Resident: - Does the social worker see you in a private room or in your own room? - If in your own room, do you feel that you have enough privacy?	Facility has appropriate arrangements for providing social services, either using: - outside resources (contract or consultant services) - qualified facility personnel under a clearly defined plan.	Refer to regulations.	
F300 1. Ensures privacy for social service interview viewing.					
F301 2. Adequate space for clerical and interviewing functions is provided.					
F302 3. Facilities are easily accessible to residents and staff.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F. Therapy areas					
F303 SNF 405.1126(a)	Therapy areas are accessible to all residents needing the facilities. Space allows for safe maneuvering of residents and equipment and staff.	Ask Resident: - Do you feel that the equipment you use is safe? - Do you have enough room for your treatment? Ask Therapy Staff: - Is your equipment adequately maintained? - Do you have enough room to safely and adequately provide treatment?	Refer to regulations.		
F304 ICF 442.328(a)	All residents are able to be observed and supervised during therapy.				
F305 1. Space is adequate for proper use of equipment by all residents receiving treatment	Equipment has labels (stickers, etc.) to indicate proper maintenance. All equipment fastened to floor and walls is secure.				
G. Facilities for Special care					
F307 SNF 405.1134(f)	Are therapy areas properly ventilated to effectively reduce heat, moisture and odors? Are private rooms available that meet regulatory criteria.	Ask Supervisory personnel: - What room(s) do you use for isolation? - What is your procedure if the room is already occupied when you need it for isolation? - Will you show me the signs you use to identify the isolation room?		Rooms meeting the regulatory requirements are available in the facility. There is a procedure that is implemented when an isolation is needed, but it is already occupied.	Resident Rights 405.1121(k)(4) 442.311(c)(2) Infection Control 405.1135(b)
F308 ICF 442.328(b)	If a resident is infected and in isolation, are precautionary signs posted, and are they legible and understandable?			Isolation signs are visible and clearly convey their intended message.	

LONG TERM CARE SURVEY

SURVLY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F309 1. Single rooms with private toilet and handwashing facilities are available for isolating residents.					
F310 2. Precautionary signs are used to identify these rooms when in use.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
H. Common Resident Areas	Use senses - sight, hearing, olfactory when surveying common areas as lounges, lobby, corridors.	Ask Residents: - Do you think that the lounges and corridors are usually clean? - Do they have any unpleasant odors? - Is the lighting level comfortable for you to read? Is it adequate for you to feel safe walking? - Do you have any difficulty with the noise level? - Is the temperature usually comfortable for you? - Do you feel there is adequate ventilation? - Are there handrails in all of the corridors? - Are they securely fastened to the wall?		- Floors and furniture should appear clean - free of gross contamination. - Residents should have lighting bright enough to safely negotiate corridors, lounges, etc., and in reading area, be bright enough to read. But the brightness should be free of glare. Remember, the elderly need a higher level of lighting as their sight diminishes. - Except for times when a louder level of sound is necessary for communication, sounds should be unobtrusive and "comfortable". - Room temperature comfort levels vary widely, and in general the elderly will require a higher temperature for comfort than younger people. Use information from resident interviews and your observations to determine if the temperature is "comfortable" for most residents.	Infection Control 405.1135(c)
F311 SNF 405.1134(j)	Note levels of lighting for both reading and non-reading areas. Is it bright enough but without glare?				
F312 ICF 442.324	Are areas clean and without offensive odors? Do background sound levels allow for ease of communication and comfort for residents/visitors? Do residents seem comfortable with the room temperature - note the use of several layers of clothing, many residents fanning themselves, etc. Are handrails on each side of the corridor and are they secure? Are smoking/no smoking areas designated?	Ask Supervisory Staff: - If there is a water main break or other interruption in the water supply, how do you obtain water for essential areas and duties?			
F313	1. All common areas are clean, sanitary and free of odors.				
F314	2. Provision is made for adequate and comfortable lighting levels in all areas.				
F315	3. There is limitation of sounds at comfort levels.				

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F316 4. A comfortable room temperature is maintained.				resident-used areas are equipped with handrails on each side. These rails securely fastened provide the residents with a firm support. - Supervisory staff are able to tell you how they will obtain water for drinking, cleaning/bathing of residents, and other essential functions if their normal water supply is interrupted.	
F317 5. There is adequate ventilation thru windows or mechanical measures or a combination of both.					
F318 6. Corridors are equipped with firmly secured handrails on each side.					
F319 7. Staff are aware of procedures to ensure water to all essential areas in the event of loss of normal supply.					Disaster Preparedness 405.1136 442.313

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
I. Maintenance of Building and Equipment F320 SNF 405.1134(i)	<ul style="list-style-type: none"> - Ceiling and floor tile in good condition - Paint in good repair - No holes in walls - Look for rat and other rodent trails outside and inside - Preventive maintenance program for all equipment is followed - Wheelchairs not stored in hallways, bathrooms, etc. - Window screens are in good repair - Check overbed tables, wheelchairs, etc., for cleanliness and operation 	Ask Staff: - How many housekeeping staff are available? - How late are housekeepers on duty during the week? - How is weekend coverage different? Ask Resident: - What if any problems have you had with special equipment you need to use?			Physical Environment 405.1134(d)
F321 1. The interior and exterior of the building are cleaning and orderly.					
F322 2. All essential mechanical and electrical equipment is maintained in safe operating condition.					
F323 3. Sufficient storage space is available and used for equipment to ensure that the facility is orderly and safe.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F324 4. Resident care equipment is clean and maintained in safe operating condition.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Indicator J applies to ICFs. J. Dietetic Service Area F326 SNF 405.1134(h)	Observe for - needed space to carry out routine operations - maintenance of working surfaces equipment, utensils, and serving dishes - operable dish washer machine. - 3-sink method of pot/ dish washing properly carried out/or written procedure posted - operable and clean exhaust fan - stored dishes and pots are free of baked-on food particles and chipped/cracked sur- faces - food stored off floor - protective covers for fluorescent lights - handwashing sink read- ily accessible	Ask Staff: - What have you been trained to do? - What type of dishwasher machine do you have? How does it operate?	The proper temperature for the Dishwasher wash cycle is 150-160 degrees Fahren- heit. The dishwasher rinse cycle is acceptable at temperature of 180 degrees Fahrenheit or when there is a change in the temperature-sensitive tape (thermolabel). The indi- vidual manufacturers' specifications may countermand these instruc- tions, particularly in the case of chemical saniti- zation.		Dietetic Services 405.1125(g) 442.331(b)
F327 1. Kitchen and dietetic ser- vice areas are adequate to insure proper, timely ser- vice for all patients.					
F328 2. Kitchen areas are properly ventilated, arranged, and equipped for storage and preparation of food as well as for dish and utensil cleaning, and refuse stor- age and removal.					

LONG TERM CARE SURVEY

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Indicator K applies to ICF K. Dietary Staff Hygiene F329 SNF 405.1125(f)	Observe the following: - cleanliness of hands, fingernails, hair, clothing - use of hair restraint - whether employees wash hands with soap and water after using the toilet, smoking, blowing their nose, touching raw meat, poultry or eggs - employees using hands to mix food when utensils could be used - employees using the same spoon more than once for tasting food while preparing, cooking, or serving. Verify that: - hot foods are 140 degrees or above - cold foods are 45 degrees or lower (*note: food held for more than 2-3 hours between 60 and 125 degrees may not be safe to eat) - cooked meats held longer than 72 hours are used, discarded or put in the freezer	Ask Staff: - What happens when you report to work with a cold, a cut or sore on your hand? - Where is handwashing sink for dietary staff? - Do you use disposable plastic hand covers? If so, when? - Where are your serving utensils located? - What are temperatures for the refrigerators and freezers? Who is responsible for checking temperatures? - Do you have thermometers to check water and food temperatures? (ask them to demonstrate how they take temperatures)			Dietetic Services 405.1125(e)(f)(g)
F330 1. Dietetic service personnel practice hygienic food handling techniques. Indicator L applies to ICF L. Dietary Sanitary Conditions F331 SNF 405.1125(g)					
F332 1. Food is stored, refrigerated, prepared, distributed, and served under sanitary conditions.					
F333 2. Waste is disposed of properly.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F333 (cont'd)	<ul style="list-style-type: none"> - check that the refrigerators are equipped with an accurate thermometer - food does not have an "off" or bad odor - cracked eggs are discarded - foods are dated and then stored as to their preparation date. <p>Observe that waste is in covered containers, bagged and tied for disposal, and that dumpsters are covered.</p>				

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
L. Emergency Power F334 SNF 405.1134(b)	Is an emergency generator available? Test generator under full load conditions. Check items of emergency power: - lighting - fire detection - alarms - extinguishing systems - life support systems Transfer time from normal power to emergency power to occur within 10 seconds. Check for grounded extension cords at nurse stations. Where are emergency outlets?			As per regulations and covered by the Life Safety Code surveyor	
F335 1. An emergency source of electrical power necessary to protect the health and safety of residents is available					
F336 2. Emergency power is adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life support systems					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F337 3. Emergency power is provided by an emergency generator located on the premises where life support systems are used.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Infection Control F338 SNF 405.1135	<ul style="list-style-type: none"> - Observation of dressing technique to identify if infection control principles are being adhered to: <ul style="list-style-type: none"> - sterile technique - sterile/clean field - disposal of dressing - handwashing - use of gloves - Observation of isolation precautions: <ul style="list-style-type: none"> - signs - linen, double bagged - soiled linen, double bagged - gowns/masks - gloves - handwashing - disposable dishes - information for visitors 	Ask Staff: <ul style="list-style-type: none"> - What type of dressing changes are you performing? - How often are dressings changed? - Why is resident on isolation/precautions? - Do laundry/housekeeping personnel/aides know procedures? Ask Resident: <ul style="list-style-type: none"> - Do you know why you have dressings? - Do you know why you are on isolation/precautions? - Do you have clean linen when you need it? 	Review records of residents selected for indepth review for infection.	Compliance will be based mainly on your observations. Deficiencies will be cited if you see: <ul style="list-style-type: none"> - breaks in aseptic or isolation technique - clutter or unclean conditions that would cause unsafe conditions - inadequate supplies of linen to provide proper care and comfort for residents - inadequate techniques for handling clean and dirty linen - evidence of insect or rodent infestation - use flash light to check for roaches in closets, cabinets. 	Nursing Services- 405.1124 442.338
A. Infection Control F339 SNF 405.1135(b)					
F340 Aseptic and isolation techniques are followed by all personnel.					
B. Sanitation F341 SNF 405.1135(c)					
F342 The facility maintains a safe, clean, and orderly interior.	<ul style="list-style-type: none"> - Procedures followed by: <ul style="list-style-type: none"> - Laundry - Housekeeping - How is dirty linen transported to laundry or holding area? - Do aides wash hands after cleaning dirty linen? - How do aides handle clean/dirty linen while changing beds? 				
C. Linen F343 SNF 405.1135(d)					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F344 ICF 442.327					
F345 1. The facility has available at all times a quantity of linen essential for proper care and comfort of residents.					
F346 2. Linens are handled: stored, processed, and transported in such a manner as to prevent the spread of infection.					
D. Pest Control F347 SNF 405.1135(e)	Look for evidence of insect or rodent presence (mouse or rat droppings, roaches, ants, flies around trash) - Screen doors closed - Windows that can be opened have screens that are in good repair	Ask Staff: - Have you seen insects (roaches, ants, flies, etc.)? - Have you seen rodents and/or droppings? - What foods are residents permitted to keep in their rooms?			
F348 ICF 442.315(c)					
F349 The facility is maintained free from insects and rodents.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
DISASTER PREPAREDNESS F350 SNF 405.1136 F351 SNF 405.1136(a) F352 ICF 442.313	<ul style="list-style-type: none"> - Disaster plan is located at each nursing station. - Evacuation plans posted in each smoke compartment. 	<p>Ask Residents:</p> <ul style="list-style-type: none"> - Do you know what to do in case of fire? - How often do you rehearse it? <p>Ask Staff:</p> <ul style="list-style-type: none"> - What are your responsibilities at a fire drill? - What is the facilities disaster plan? (Specify types, [(e.g., fire, flood, etc.)]) - How you undergone disaster training? - Have you participated in a fire disaster drill? When? - How frequently are drills held? - Have you been trained/instructed in the use of fire equipment, fire containment methods? - Have you been trained in transfer or casualties and routes? - How would staff meet emotional needs of residents during/following a "disaster", e.g., fire 		A disaster plan is available and facility staff know their roles.	Physical Environment 405.1134(a)(b) 442.321
Indicators A and B apply to ICfs. A. Disaster Plan F353 1. Facility staff are aware of plans, procedures to be followed for fire, explosion or other disaster.					
F354 2. Facility staff are knowledgeable about evacuation routes.					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F355 3. Facility staff are aware of their specific responsibilities in regard to evaluation and protection of residents.					
F356 4. Facility staff are aware of methods of containing fire.					
B. Drills F357 SNF 405.1136(b)					
F358 1. All employees are trained as part of their employment orientation in all aspects of preparedness for any disaster					

LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F359 2. Facility staff participate in ongoing training and drills in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster. INTENT To ensure a clean, safe environment for residents.					

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PART 488—[AMENDED]

B. 1. Part 488 is amended by redesignating the sections listed below from Subpart S of Part 405 of this chapter into the indicated subparts and sections:

<i>Old sec. Subpart S</i>	<i>New sec. Subpart A</i>
405.1903.....	488.18
405.1904.....	488.20
405.1905.....	488.24
405.1906.....	488.26
405.1907.....	488.28

<i>Old sec. Subpart B</i>	<i>New sec. Subpart B</i>
405.1908.....	488.50
405.1909.....	488.52
405.1910.....	488.54
405.1911.....	488.56
405.1912.....	488.60
405.1913.....	488.64

§ 488.56 [Amended]

2. The title of newly redesignated § 488.56 is revised to read: "Temporary waivers applicable to skilled nursing facilities."

§ 488.60 [Amended]

3. The title of newly redesignated § 488.60 is revised to read: "Special procedures for approving end stage renal disease facilities."

C. Section 488.26 is revised to read as follows:

§ 488.26 Determining compliance.

(a) The decision as to whether there is compliance with a particular condition of participation or conditions for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(b) The State agency must adhere to the following principles in determining compliance with participation requirements:

(1) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(2) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically surveyors will directly observe the actual provision of care and services to residents, and the

effects of that care, to assess whether the care provided meets the needs of individual residents;

(3) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(4) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(5) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(c) The State survey agency must use the survey methods, procedures, and forms that are prescribed by HCFA.

(d) The survey agency must ensure that a facility's actual provision of care and services to residents and the effects of that care on residents are assessed in a systematic manner.

(e) A SNF survey must include the following elements:

(1) An entrance conference;

(2) A resident-centered tour of the facility;

(3) An in-depth review of a sample of residents, including observation, interview and record review;

(4) Observation of the preparation and administration of drugs for a sample of residents;

(5) Evaluation of a facility's meals, dining areas and eating assistance procedures;

(6) A description in the survey report of all deficiencies found during the survey;

(7) An exit conference; and

(8) Follow-up surveys, as appropriate.

D. Technical Amendments to Part 488:

1. In redesignated § 488.18:

a. In paragraph (a), "§ 488.28 of this part" is substituted for "§ 405.1907";

b. In paragraph (b), "§ 488.54 of this part" is substituted for "§ 405.1910".

2. In redesignated § 488.20, in paragraph (a), "§ 488.50 of this part" is substituted for "§ 405.1908".

3. In redesignated § 488.28, in paragraph (a), "§ 488.50 of this part" is substituted for "§ 405.1908".

4. In redesignated § 488.50:

a. In paragraph (a) introductory text, "Subpart K of Part 405," is substituted for "Subpart K of this part,".

b. In paragraph (a)(1), "§§ 489.15(d) and 489.16 of this chapter" is substituted for "§ 405.604(b)".

c. In paragraph (b), "§ 488.20(b) of this part" is substituted for "§ 405.1904(b)".

d. In paragraph (c), "§§ 489.15(d) and 489.16 of this chapter" is substituted for "§ 405.604(c)".

5. In redesignated § 488.52:

a. In paragraph (a), "§ 405.1311(a) of this chapter" is substituted for

"§ 405.1311(a)"; "Subparts A, B and C of this part" is substituted for "Subpart S"; "§ 405.1311(b) of this chapter" is substituted for "§ 405.1311(b)"; "§ 405.1311(f) of this chapter" is substituted for "§ 405.1311(f)".

b. In paragraph (b), "Subpart M of Part 405" is substituted for "Subpart M"; "§ 405.1312(b)(4) of this chapter" is substituted for "§ 405.1312(b)(4)".

c. In paragraph (c), "§ 405.1311(c) of this chapter" is substituted for "§ 405.1311(c)".

d. In paragraph (d), "§ 488.28 of this part" is substituted for "§ 405.1907".

6. In redesignated § 488.56:

a. In paragraph (a), "§ 405.1124 of this chapter" is substituted for "§ 405.1124"; and

b. In paragraph (b), "§ 405.1122 of this chapter" is substituted for "§ 405.1122".

7. In redesignated § 488.60:

a. "Subpart U of Part 405" is substituted for "Subpart U of this part" wherever the term occurs.

b. In paragraph (a), "§ 488.12 of this part" is substituted for "§ 405.1902";

c. "§ 405.2122(b) of this chapter" is substituted for "§ 405.2122(b)" wherever the term occurs; and

d. In paragraph (f), "§ 405.2100(c) of this chapter" is substituted for "§ 405.2100(c)".

8. In redesignated § 488.64, "§ 405.1137(d) of this chapter" is substituted for "§ 405.1137(d)" wherever the term occurs.

E. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**SUBCHAPTER B—MEDICARE PROGRAMS**

1. In Subchapter B, the table of contents of Part 405 is amended by removing and reserving Subpart S as follows:

Subpart S [Reserved]**Subpart S [Removed and reserved]**

2. In Part 405, Subpart S, §§ 405.1901 and 405.1902 are removed and the subpart is removed and reserved.

F. In Subchapter C, Part 442 is amended as follows:

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS**PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES**

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In Subpart B, § 442.30 is amended by revising the introductory text of paragraph (a), revising paragraph (a)(4), redesignating existing paragraph (a)(5) as paragraph (a)(8) and revising it, and adding new paragraphs (a)(5), (a)(6) and (a)(7) to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF service only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. As agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(4) The survey agency failed to use the Federal standards, and the forms, methods and procedures prescribed by HCFA as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

(5) The survey agency failed to adhere to the following principles in determining compliance:

(i) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(ii) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically, surveyors will directly observe the actual provision of care and services to residents, and the effects of that care, to assess whether the care provided meets the needs of individual residents;

(iii) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(iv) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(v) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(6) The survey agency failed to assess in a systematic manner a facility's actual provision of care and services to residents and effects of that care on residents.

(7) Required elements of the SNF or ICF survey process include all of the following:

(i) An entrance conference;

(ii) A resident-centered tour of facility;

(iii) An in-depth review of a sample of residents including observation, interview and record review;

(iv) Observation of the preparation and administration of drugs for a sample of residents;

(v) Evaluation of a facility's meals, dining areas and eating assistance procedures;

(vi) Formulation of a deficiency statement based on the incorporation of all appropriate findings onto the survey report form;

(vii) An exit conference; and

(viii) Follow-up surveys as appropriate.

(8) The agreement's terms and conditions do not meet the requirements of this subpart.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance)

Dated: May 31, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Approved: June 2, 1988.

Otis R. Bowen,
Secretary.

[FR Doc. 88-13665 Filed 6-16-88; 8:45 am]

BILLING CODE 4120-01-M

Federal Register

**Friday
June 17, 1988**

Part V

Department of Defense General Services Administration National Aeronautics and Space Administration

**48 CFR Part 4
Federal Acquisition Regulation (FAR);
Contractor Records Retention; Proposed
Rule**

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DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 4

Federal Acquisition Regulation (FAR);
Contractor Records Retention

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 4.703 to extend the record retention period for contractors who submit late annual indirect cost rate proposals and clarify the meaning of "record" to include computer input data.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 16, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88-19 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed revisions to FAR 4.703 are not expected to have a significant economic impact on small business entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because the extension of time for retention of records only applies to a limited number of contractors, of which an even smaller number are small entities, which fail to meet the 90-day requirement for indirect cost rate submissions. The retention requirement being imposed for computer data in the form originally recorded on punched cards, electronic or magnetic disks and tapes and the like, only affects those contractors which already maintain this type of data in their normal course of business. The burden of storing this additional data along with records already required to be obtained is minimal. An initial regulatory flexibility analysis has not been performed. However, comments are invited from small businesses and other interested parties.

Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88-610 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because it is not expected that this proposed rule will impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require approval of OMB under 44 U.S.C. 3501, *et seq.*, because, on balance, the proposed rule will require insignificant time to collect the data or to place it in storage.

List of Subjects in 48 CFR Part 4

Government procurement.

Dated: June 10, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 4 be amended as set forth below:

PART 4—ADMINISTRATIVE MATTERS

1. The authority citation for Part 4 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 4.703 is amended by adding paragraph (b)(3) and by revising paragraph (d) to read as follows:

4.703 Policy.

* * *

(b) * * *

(3) The contractor does not meet the original 90-day due date for submission of acceptable final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day's extension of the rate submission due date.

* * *

(d) Within the meaning of records as stated in 4.703(a), contractors shall retain any computer data in the form originally recorded on punched cards, electronic or magnetic disks and tapes, or comparable media for input to computer data systems if the related data are otherwise required by this subpart to be retained. Contractors shall not destroy, discard, delete, or write over such computer media input until such time as designated in 4.703(a).

[FR Doc. 88-13766 Filed 6-16-88; 8:45 am]

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session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-8641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4556/Pub. L. 100-331

To amend the provisions of the Agricultural Act of 1949 relating to certain cross compliance requirements under the extra long staple cotton program. (June 14, 1988; 102 Stat. 602; 1 page) Price: \$1.00

H.J. Res. 469/Pub. L. 100-332

To designate June 1988 as "National Recycling Month." (June 14, 1988; 102 Stat. 603; 2 pages) Price: \$1.00

The Weekly Compilation of **Presidential Documents**

Administration of Ronald Reagan

Monday, January 11, 1988
Volume 24—Number 1
Pages 1-14

nominations submitted to the Senate, a checklist of White House press releases and a digest of other Presidential activities and White House announcements.

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